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Air Pollution Regulations in State Implementation Plans: New Mexico

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Air Pollution Regulations in State Implementation Plans: New Mexico

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Air Pollution Regulations in State Implementation Plans:

New Mexico

by

Walden Division of Abcor, Inc.
Wilmington, Massachusetts

Contract No. 68-02-2890

EPA Project Officer: Bob Schell

Prepared for

U.S. ENVIRONMENTAL PROTECTION AGENCY
Office of Air, Noise, and Radiation
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

August 1978

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Publication No. EPA-450/3-78-081

INTRODUCTION

This document has been produced in compliance with Section 110(h)(1) of the Clean Air Act Amendments of 1977. The Federally enforceable regulations contained in the State Implementation Plans (SIPs) have been compiled for all 56 States and territories (with the exception of the Northern Mariana Islands). They consist of both the Federally approved State and/or local air quality regulations as indicated in the Federal Register and the Federally promulgated regulations for the State, as indicated in the Federal Register. Regulations which fall into one of the above categories as of January 1, 1978, have been incorporated. As mandated by Congress, this document will be updated annually. State and/or local air quality regulations which have not been Federally approved as of January 1, 1978, are not included here; omission of these regulations from this document in no way affects the ability of the respective Federal, State, or local agencies to enforce such regulations.

There have been recent changes in the Federal enforceability of parking management regulations and indirect source regulations. The October, 1977, appropriation bill for EPA prohibited Federal enforcement of parking management regulations in the absence of specific Federal authorizing legislation. Federally promulgated parking management regulations have, therefore, been suspended indefinitely. Pursuant to the 1977 Clean Air Act Amendments, indirect source regulations may not be required for the approval of a given SIP. Consequently, any State adopted indirect source regulations may be suspended or revoked; State adopted indirect source regulations contained in an applicable SIP are Federally enforceable. More importantly, EPA may only promulgate indirect source review regulations which are specific to Federally funded, operated, or owned facilities or projects. Therefore, the Federally promulgated indirect source regulations appearing in this document are not enforceable by EPA except as they relate to Federal facilities.

Since State air quality regulations vary widely in their organization, content, and language, a standardized subject index is utilized in this document. Index listings consist of both contaminant and activity oriented categories to facilitate usage. For example, for regulations which apply to copper smelters, one might look under sulfur compounds (50.2), particulate matter process weight (50.1.1), or copper smelters (51.15). Federal regulations pertaining to a given State immediately follow the approved State and local regulations.

Additionally, a summary sheet of the information included in each comprehensive document is presented prior to the regulatory text to allow one to quickly assess the contents of the document. Specifically, the summary sheets contain the date of submittal to EPA of each revision

to the SIP and the date of the Federal Register in which the revision was either approved or disapproved by EPA. Finally, a brief description or reference of the regulation which was submitted is also included.

This document is not intended to provide a tool for determining the enforceability of any given regulation. As stated above, it is intended to provide a comprehensive compilation of those regulations which are incorporated directly or by reference into Title 40, Part 52, of the Code of Federal Regulations. Consequently, the exclusion of a Federally approved regulation from this document does not diminish the enforceability of the regulation. Similarly, the inclusion of a given regulation (for example, regulations governing pollutants, such as odors, for which there is no national ambient air quality standards) in this document does not, in itself, render the regulation enforceable.

SUMMARY SHEET
OF
EPA-APPROVED REGULATION CHANGES

NEW MEXICO

<u>Submittal Date</u>	<u>Approval Date</u>	<u>Description</u>
3/7/72	5/31/72	Revised Regs. 506, 507, 604, 605, 606, 651, 652
7/31/72	5/14/73	Revised Regs. 702, 703, 704, 705
10/3/75	8/17/76	Revised Reg. 602 except 602B(2) and (3)
11/6/75	10/4/77	Revised Regs. 100, 705; New Reg. 706

FEDERAL REGULATIONS

<u>Section Number</u>	<u>Description</u>
52.1623	Public Availability of Emissions Data Reg.
52.1628	Indirect Source Regulation
52.1634	Prevention of Significant Deterioration Reg.

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STATE AIR POLLUTION REGULATIONS

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- 2.0 GENERAL PROVISIONS AND ADMINISTRATIVE PROCEDURES
- 3.0 REGISTRATION CERTIFICATES, OPERATING PERMITS AND APPLICATIONS
- 4.0 AIR QUALITY STANDARDS (PRIMARY AND SECONDARY)
 - 4.1 PARTICULATES
 - 4.2 SULFUR DIOXIDE
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 - 51.2 COAL OPERATIONS (includes Cleaning, Preparation, Coal Refuse Disposal Areas, Coke Ovens, Charcoal Kilns, Related Topics)
 - 51.3 CONSTRUCTION (includes Cement Plants, Materials Handling, Topics Related to Construction Industry)
 - 51.4 FERROUS FOUNDRIES (includes Blast Furnaces, Related Topics)
 - 51.5 FUEL BURNING EQUIPMENT (coal, natural gas, oil) - Particulates (includes Fuel Content and Other Related Topics)
 - 51.6 FUEL BURNING EQUIPMENT (coal, natural gas, oil) - SO₂ (includes Fuel Content and Other Related Topics)
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 - 51.14 PAPER PULP; WOOD PULP AND KRAFT MILLS (includes Related Topics)
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100. DEFINITIONS. -- As used in these regulations:

- A. "board" means the environmental improvement board;
- B. "department" means the environmental improvement agency;
- C. "director" means the director of the environmental improvement agency;
- D. "person" means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or their legal representatives, agents or assigns;
- E. "hydrogen sulfide" means the chemical compound containing two atoms of hydrogen and one of sulfur which as a gaseous air contaminant may be determined by the methylene blue method for total sulfides as described and published in the article in the periodical Analytical Chemistry, Volume 29, No. 9, September 1957, pages 1349-1351 entitled, "Ultramicro-determination of sulfides in Air," published by the American Chemical Society, 20th & Northampton Street, Easton, Pennsylvania, or determined by any other method that provides equal or greater precision.
- F. "sulfur dioxide" means the chemical compound containing one atom of sulfur and two of oxygen which as a gaseous air contaminant may be determined by the West and Gaeke Method as described and published in the article in U.S. Public Health Service Publication No. 999-AP-11, May 1965, entitled "Selected Method for the Measurement of Air Pollutants" pages A-1 through A-5, as published by the Publication Office of the Robert A. Taft Sanitary Engineering Center, Cincinnati, Ohio, or determined by any other method that provides equal or greater precision. Sulfur dioxide includes other oxides of sulfur, such as sulfur trioxide, which may test as sulfur dioxide;
- G. "carbon monoxide" means the chemical compound containing one atom of carbon and one of oxygen which as a gaseous air contaminant may be determined by the nondispersive infrared method described in Appendix C of the Federal Register, Volume 36, No. 21, Saturday, January 30, 1971, pages 1509-1510, or determined by any other method that provides equal or greater precision;
- H. "nitrogen dioxide" means the chemical compound containing one atom of nitrogen and two of oxygen which as a gaseous air contaminant may be determined by the Saltzman Method as described and published in "Selected Methods for the Measurement of Air Pollutants," U.S. Public Health Service Publication No. 999-AP-11, May 1965, Pages C-1 through C-7, published by the Publication Office of the Robert A. Taft Sanitary Engineering Center, Cincinnati, Ohio, or determined by any other method that provides equal or greater precision. Nitrogen dioxide includes other oxides of nitrogen, such as nitric oxide, which may test as nitrogen dioxide;
- I. "photochemical oxidants" means that gaseous air contaminant determined by the neutral Buffered-Potassium Iodide method as described

and published in "Selected Methods for the Measurement of Air Pollutants," U.S. Public Health Service Publication No. 999-AP-11, May 1965, pages D-1 through D-5, published by the Publication Office of the Robert A. Taft Sanitary Engineering Center, Cincinnati, Ohio, or determined by any other method that provides equal or greater precision;

J. "hydrocarbons" means that gaseous air contaminant, expressed as methane equivalents, determined by the flame ionization method and corrected for methane in the sampled air, described in Appendix E of the Federal Register, Volume 36, No. 21, Saturday, January 30, 1971, pages 1512-1513, or determined by any other method that provides equal or greater precision;

K. "heavy metal" means any metal having an atomic number greater than 21;

L. "asbestos" includes chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite;

M. "total reduced sulfur" means any combination of sulfur compounds, except sulfur dioxide and free sulfur, which test as total reduced sulfur, including but not limited to hydrogen sulfide, methyl mercaptan, and ethyl mercaptan;

N. "total suspended particulate" means that airborne particulate matter determined by the methods described and published in the article in the Journal of the Air Pollution Control Association, Volume 17, No. 1, January 1967, pages 17-25 entitled "Recommended Standard Method for Atmospheric Sampling of Fine Particulate Matter by Filter Media-High-volume-Sampler", as published by the Air Pollution Control Association, 4400 Fifth Avenue, Pittsburgh, Pennsylvania, or determined by any other method that provides equal or greater precision;

O. "cohs" means coefficient of haze units used in expressing soiling index;

P. "soiling index" means the index of airborne particulates expressed in cohs determined by the monitoring and light transmission methods described in the article in the Journal of Air Pollution Control Association, Volume 13, No. 9, September 1963, pages 397-402, entitled "Recommended Standard Method for Continuing Air Monitoring for Fine Particulate," as published by the Air Pollution Control Association, 4400 Fifth Avenue, Pittsburgh, Pennsylvania;

Q. "lead" means that particulate air contaminant determined by the method described and published in the article in the American Industrial Hygiene Association Journal, September-October, 1963, pages 481-491, entitled "The U.S. Public Health Service Method for Determination of Lead in Air and Biological Materials," as published by the American Industrial Hygiene Association, 25711 Southfield Road, Southfield, Michigan, and analyzed by atomic absorption spectrophotometry, or determined by any other method that provides equal or greater precision;

R. "particulate matter" means any airborne material except uncombined water which is often, but not always, suspended in air or other

gases at atmospheric temperature and pressure;

S. "ppm" means parts per million by volume;

T. " $\mu\text{g}/\text{m}^3$ " means micrograms per cubic meter;

U. " mg/m^3 " means milligrams per cubic meter;

V. "fugitive dust" means solid airborne particulate matter emitted as a result of the processing operation from any source, including waste piles, other than a flue;

W. "Kraft pulp" means the fibrous cellulose material produced in a Kraft mill;

X. "Ringelmann scale" means the grading of opacity, appearance, density or shade of a smoke emission, as described in the text Air Pollution, Volume II, Chapter 29, pages 537-560, by Paul W. Purdom, 2nd edition, 1968 (A. C. Stern, editor);

Y. "schedule of compliance" means a schedule or timetable acceptable to the board, which clearly sets out in detail the steps to be taken in achieving the objectives of a regulation or standard;

Z. "smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, soot and combustible material;

AA. "wood waste burner" means any device used for disposing of wood wastes including but not limited to a wigwam type burner;

BB. "flue" means any duct for air, gases or the like, such as a stack or chimney; and

CC. "open burning" means any manner of burning, not in a device or chamber designed to achieve complete combustion, where the products of combustion are emitted, directly or indirectly, into the open air.

DD. "gasification plant" means a plant that manufactures synthetic gas and includes: all process gas streams and products produced in the gasification process; all operations associated with treatment of gasification products; ash removal equipment; regeneration of any absorbent or oxidizing agents (and any off gases so produced) used in the treatment or removal of products produced in the gasification process; catalyst regeneration; storage facilities for liquids, solids and gases; and pretreatment of coal. Gasification plant does not include the coal preparation plant, the sizing and briquetting of coal or any process gas streams after the streams enter a boiler and undergo combustion;

EE. "existing petroleum processing facility" means any petroleum refinery or natural gas processing plant the fabrication, erection, or installation of which was commenced prior to July 1, 1974. It does not include tank batteries, separators, heater-treaters or field compressors;

FF. "new petroleum processing facility" means any petroleum refinery, natural gas processing plant, or part thereof, the fabrication, installation, or modification of which is commenced on or after July 1, 1974. It does not include tank batteries, separators, heater-treaters or field compressors;

GG. "existing petroleum refinery" means a petroleum refinery the fabrication, erection or installation of which was commenced prior to July 1, 1974, and includes all vessels, boilers, heaters, condensers, cracking units, regeneration units, sour water strippers, wastewater separators, storage and loading facilities, sulfur recovery facilities, flares and other facilities inter-connected in their processing operations and used in the processing of crude oil, condensate, pentanes, butanes, or similar substances for the purpose of producing gasoline, fuel oil, jet fuel, diesel, asphalt or similar substances. Petroleum refinery does not include natural gas processing plants;

HH. "new petroleum refinery" means a petroleum refinery or part thereof the fabrication, erection, installation or modification of which is commenced on or after July 1, 1974, and includes all vessels, boilers, heaters, condensers, cracking units, sweetening units, regenerating units, sour water strippers, wastewater separators, storage and loading facilities, sulfur recovery facilities, flares and other facilities inter-connected in their processing operations and used in the processing of crude oil, condensate, pentanes, butanes or similar substances for the purpose of producing gasoline, fuel oil, jet fuel, diesel, asphalt or similar substances. Petroleum refinery does not include natural gas processing plants;

II. "existing natural gas processing plant" means a natural gas processing plant the fabrication, erection or installation of which was commenced prior to July 1, 1974, and includes all vessels, boilers, heaters, compressors (engines and turbines), sweetening and regenerating units, dehydration units, piping, storage and loading facilities, sulfur recovery facilities, flares and any other facility connected with the processing or storage of field gas, sour residue gas, and other hydrocarbons associated with field gas; and

JJ. "new natural gas processing plant" means a natural gas processing plant or part thereof the fabrication, erection, installation or modification of which is commenced on or after July 1, 1974, and includes all vessels, boilers, heaters, compressors (engines and turbines), sweetening and regenerating units, dehydration units, piping, storage and loading facilities, sulfur recovery facilities, flares and any other facility connected with the processing or storage of field gas, sour residue gas and other hydrocarbons associated with field gas.

(2.0)

200. Preamble

Ambient Air Quality Standards are not intended to provide a sharp dividing line between air of satisfactory quality and air of unsatisfactory quality. They are, however, numbers which represent objectives that will preserve our air resource.

It is understood that at certain times, due to unusual meteorological conditions, these standards may be exceeded for short periods of time without the addition of specific pollutants into the atmosphere. The adoption of these statewide ambient air quality standards does not prohibit the promulgation of standards for specific areas, functions, and conditions within the state such as air sheds, municipalities, and certain counties, as authorized under the Act.

As scientific data accumulates on the effects of a contaminant, these standards may be revised or additional standards added.

(4.0) 201. Ambient Air Quality Standards

A. The maximum allowable concentrations of total suspended particulate in the ambient air are as follows:

	<u>Maximum Concentration</u>
1. 24 hour average	150 $\mu\text{g}/\text{m}^3$
2. 7 day average	110 $\mu\text{g}/\text{m}^3$
3. 30 day average	90 $\mu\text{g}/\text{m}^3$
4. annual geometric mean	60 $\mu\text{g}/\text{m}^3$

B. When one or more of the following elements are present in the total suspended particulate, the maximum allowable concentrations of the elements involved, based on a thirty day average, are as follows:

	<u>Maximum Concentration</u>
1. beryllium	0.01 $\mu\text{g}/\text{m}^3$
2. asbestos	0.01 $\mu\text{g}/\text{m}^3$
3. heavy metals (total combined)	10 $\mu\text{g}/\text{m}^3$

C. The maximum allowable concentrations of the following air contaminants in the ambient air are as follows:

	<u>Maximum Concentration</u>
1. sulfur dioxide	
(a) 24 hour average	0.10 ppm
(b) annual arithmetic average	0.02 ppm
2. hydrogen sulfide (1 hour average)	0.003 ppm
3. total reduced sulfur (1 hour average)	0.003 ppm

Maximum Concentration

- | | |
|--|----------|
| 4. carbon monoxide | |
| (a) 8 hour average | 8.7 ppm |
| (b) 1 hour average | 13.1 ppm |
| 5. nitrogen dioxide | |
| (a) 24 hour average | 0.10 ppm |
| (b) annual arithmetic average | 0.05 ppm |
| 6. photochemical oxidants (1 hour average) | 0.06 ppm |
| 7. non-methane hydrocarbons (3 hour average) | 0.19 ppm |

D. On an annual average, the soiling index shall not exceed 0.4 coh/1000 linear feet of air.

(51.13)

301. Regulation to Control Open Burning

A. Except as otherwise provided in this regulation, no person shall permit, cause, suffer or allow open burning.

B.

1. Open burning is permitted for recreational and ceremonial purposes, for barbecuing, for heating purposes in fireplaces, for the non-commercial cooking of food for human consumption and for warming by small wood fires at construction sites.

2. Open burning of natural gas is permitted at gasoline plants and compressor stations and when used or produced in drilling, completion and workover operations on oil and gas wells when necessary to avoid serious hazard to safety.

3. Open burning of explosive materials is permitted where the transportation of such materials to other facilities could be dangerous.

C. Subject to the conditions contained in Subsection E, open burning of refuse is permitted in communities having:

1. a population of less than 3000; and
2. no public refuse collection service or the economic means of obtaining or establishing one.

Subsection C does not apply to any kind of salvage operation or to any person to whom a collection service is available.

D. Subject to the conditions contained in Subsection E, open

burning is permitted for the following purposes:

1. disposal of fully dried tumbleweeds; and
2. agricultural management, excluding timber, directly related to the growing or harvesting of crops.

E. Any open burning permitted under Subsections C and D must be maintained under the following conditions:

1. the emission of smoke shall not be allowed to pass onto or across a public road or landing strip such that a hazard is created by impairment of visibility;
2. no natural or synthetic rubber or petroleum products may be burned. For the purpose of frost control in agricultural operations, natural petroleum products may be burned;
3. care must be taken to minimize the amount of dirt on the material being burned;
4. all burning, except agricultural burning, must take place between the hours of 10:00 a.m. and 4:00 p.m.;
5. the material to be burned must be as dry as possible; and
6. the wind direction at the site of agricultural burning must be such that the smoke will generally be carried away from areas of human habitation.

F. Subject to whatever conditions the department may impose, open burning is permitted for the following purposes when a permit is obtained from the department: weed abatement; prevention of fire hazards; disposal of dangerous materials; instruction and training of bona fide fire-fighting and fire rescue personnel; civil defense; conservation; game management; disease and pest control; land clearance for highway construction; forestry management; control of vegetation in irrigation ditches and canals; clearance and maintenance of watercourses and flood control channels to eliminate flood hazards; disposal of hydrocarbons spilled or lost from pipeline breaks or other transport failure; and other special circumstances.

G. A permit to burn shall not be issued if the department determines that:

1. a practical alternative to burning exists;
2. the health or welfare of any other person may be detrimentally affected; or
3. ambient air quality of other property may be detrimentally affected.

H. Any person seeking a permit to open burn shall do so by submitting a request to the Air Quality Control Unit of the department. The

department may require the requestor to submit his request in writing and any or all the following information:

1. the requestor's name, address and telephone number;
2. the location where the burning is to be conducted;
3. the type and quantity of material to be burned;
4. the date when the burning is to be conducted;
5. the methods that will be followed to ignite, maintain and control the burning;
6. reasons why the requestor believes the burning is necessary and
7. the alternatives to burning and the reasons why the requestor believes them not to be feasible.

(50.1.2)

401. Regulation to Control Smoke

A. Except as provided in Regulations 301 and 402 and the remainder of this regulation, no person shall permit, cause, suffer or allow the emission into the open air of any smoke having a density or shade greater than #1 on the Ringelmann scale for a period or periods aggregating more than one minute in any consecutive thirty minute period.

B. No person shall permit, cause, suffer or allow the emission into the open air of any smoke having a density or shade greater than #1.5 on the Ringelmann scale for any period greater than ten seconds from any diesel-powered vehicle operating below 8,000 feet (mean sea level).

C. No person shall permit, cause, suffer or allow the emission into the open air of any smoke having a density or shade greater than #2 on the Ringelmann scale for any period greater than ten seconds from any diesel-powered vehicle operating above 8,000 feet (mean sea level).

D. This regulation does not apply to:

1. emissions from diesel-powered vehicles if the emissions are a direct result of a cold engine start-up;
2. off-highway, diesel-powered vehicles operating in non-urban areas; and
3. oil well drilling rigs and oil well servicing rigs.

E. No person shall permit, cause, suffer or allow the emission into the open air of any smoke having a density or shade greater than #1 on the Ringelmann Scale for any period greater than ten seconds from any diesel-powered locomotive operating below 8,000 feet (mean sea level).

F. No person shall permit, cause, suffer or allow the emission into the open air of any smoke having a density or shade greater than #2 on the Ringelmann scale for any period greater than ten seconds from any diesel-powered locomotive:

1. operating above 8,000 feet (mean sea level); or
2. involved in switching and railroad yard use.

G. This regulation does not apply to emissions from diesel-powered locomotives if the emissions are a direct result of a cold engine start-up.

(51.20) 402. Regulation to Control Wood Waste Burners

A. Emissions from wood waste burners existing on July 1, 1970, shall not equal or exceed #2 on the Ringelmann scale; or at the discretion of the board, in lieu of Ringelmann measurement, a grain loading of 0.2 grains per standard cubic foot of exhaust gas shall not be equaled or exceeded.

B. Emissions from wood waste burners constructed after July 1, 1970, shall not equal or exceed #1 on the Ringelmann scale; or at the board's discretion, in lieu of Ringelmann measurement, a grain loading of 0.1 grains per standard cubic foot of exhaust gas shall not be equaled or exceeded.

C. After midnight, December 31, 1974, emissions from all wood waste burners shall not equal or exceed #1 on the Ringelmann scale; or at the discretion of the board, in lieu of Ringelmann measurement, a grain loading of 0.1 grains per standard cubic foot of exhaust gas shall not be equaled or exceeded.

D. The temperature of the exiting gases from a wood waste burner shall be not lower than that required to meet the operational requirements of Subsections A, B and C of this section. Each wood waste burner must be equipped with devices which continuously measure and record the temperature of exiting gases of the burner. The temperature measuring device shall be located within three (3) feet of the top of a wood waste burner at a horizontal position 90° either side of the waste induction feed mechanism. The owner or operator of the wood waste burner must maintain the records of the temperature recording device for such time and in such manner as the department may require.

E. The operational requirements of Subsections A, B and D do not apply during the first sixty minutes of the daily operation of a wood waste burner.

(50.1) 500. Regulations Governing Emission of Particulate Matter

(51.8) 501. Asphalt Process Equipment

A. No person owning or operating asphalt process equipment shall permit, cause, suffer or allow particulate matter emissions to the

atmosphere in excess of the maximum amounts specified in the following table:

<u>Aggregate Process Rate</u> <u>Pounds Per Hour</u>	<u>Maximum</u> <u>Stack Emission Rate</u> <u>Pounds Per Hour</u>
10,000	10
20,000	15
30,000	22
40,000	28
50,000	31
100,000	33
200,000	37
300,000	40
400,000	43
500,000	47
600,000 & above	50

B. When the process rate is between any two consecutive process rates in the table, the maximum stack emission rate is determined by interpolation. Where a plant or operation has more than one stack, the maximum stack emission rate applies to the total of the emissions from all stacks.

C. No person owning or operating asphalt process equipment shall operate the equipment without a fugitive dust control system. The fugitive dust control system shall be operated and maintained so that all particulate emissions are limited to the stack outlet.

D.

1. Upon request, the department, by written permit, may suspend the operational requirements of Subsections A, B and C of this regulation for portable asphalt process equipment to be operated temporarily in rural areas. A permit shall not be issued for any period exceeding ninety operating days, but may be renewed when reasonably necessary for completion of a project. A written request that has not been acted upon within ten days after its receipt shall be deemed granted.

2. In making its decision on a petition, the department shall give weight it deems appropriate to all facts and circumstances, including but not limited to:

(a) character and degree of injury to, or interference with health, welfare, visibility and property;

(b) the public interest, including the social and economic value of the sources and subjects of the air contaminants involved; and

(c) technical practicability and economic reasonableness of complying with this regulation.

3. The department may require the requestor to submit his request in writing and any or all of the following information:

- (a) requestor's name, address and telephone number;
- (b) nature of the project and the location where the unit is to be operating;
- (c) the proposed length of time of operation;
- (d) the aggregate process rate (pounds per hour) of the equipment to be utilized: and
- (e) reasons why the requestor believes the suspension of the operational requirements is necessary.

E. As used in this regulation, "rural area" means any area five or more miles from a community of more than fifty people and one or more miles from any residence.

(51.3) 502. Cement Kilns

No person operating or utilizing cement kilns shall permit, cause, suffer or allow particulate matter emissions in excess of the 230 mg/m³ of exhaust gas.

(51.3) 503. Gypsum Processing Plants

No person operating or utilizing equipment for gypsum processing shall permit, cause, suffer or allow particulate matter emissions in excess of 690 mg/m³ of exhaust gas.

(51.5) 504. Particulate Emissions from Coal Burning Equipment

A. Emissions of particulate matter from coal burning equipment which prior to the effective date of these Regulations were in operation or in the process of construction and which were designed to meet the following maximum emission standards shall not exceed Table II. Operators of such equipment shall have ninety days following the effective date of this regulation to file an acceptable schedule of compliance with the Board, or its authorized representative, to insure that by a time specified in the schedule, all coal burning equipment will not exceed emission limits established under Table III, part B, of this regulation. In the event no schedule of compliance is filed or no acceptable schedule of compliance is filed, then the coal burning equipment shall comply with Table III by midnight December 31, 1973.

TABLE II

Heat Input in Million British Thermal Units Per Hour	Maximum Allowable Emissions of Particulate Matter in Pounds Per Million British Thermal Units Input Per Hour
30 or less	0.70
31 or larger	0.50

B. Emissions of particulate matter from other coal burning equipment shall not exceed the maximum allowable emissions set forth in the following Table III, except that coal burning equipment in operation or in the process of construction at the effective date of these regulations and which do not meet the criteria set out in (A) above, shall comply with Table III by midnight December 31, 1971. Operators of such equipment shall have ninety days following the effective date of these regulations to file an acceptable schedule of compliance with the Board of its authorized representative, to insure that this equipment shall be in compliance with emission limits established in Table III by midnight December 31, 1971.

TABLE III

Heat Input in Million British Thermal Units Per Hour	Maximum Allowable Emissions of Particulate Matter in Pounds per Million British Thermal Units Input Per Hour
10	0.56
20	0.48
30	0.43
40	0.40
50	0.38
70	0.35
100	0.33
200	0.28
300	0.25
400	0.23
500	0.22
700	0.20
1000	0.190
2000	0.172
3000	0.162
5000	0.150
7500	0.141
10000	0.135

In lieu of Table III, emissions may be calculated by the following formulas:

E = Particulate emissions

I = Total Heat Input (in units of BTU's x 10⁶/hr.)

When I = 1 to 1000 then

$$E = 0.96135I^{-0.23471}$$

When I = 1,000 to 20,000 then

$$E = 0.52431I$$

C. Particulate matter emissions shall be determined by the method described in the American Society of Mechanical Engineers Power Test Code PTC 27-1957, entitled "Determining Dust Concentration in a Gas Stream," published by the American Society of Mechanical Engineers, 345 East 47th Street, New York, New York.

(57.27)

505. Pumice, Mica and Perlite Process Equipment

A. No person owning or operating pumice, mica or perlite process equipment shall permit, cause, suffer or allow particulate matter emissions to the atmosphere from a stack or stacks in excess of the maximum amounts specified in the following table:

<u>Process Rate</u> <u>Pounds Per Hour</u>	<u>Maximum</u> <u>Stack Emission Rate</u> <u>Pounds Per Hour</u>
10,000	10
20,000	15
30,000	22
40,000	28
50,000	31
100,000	33
200,000	37
300,000	40
400,000	43
500,000	47
600,000 & above	50

B. When the process rate is between any two consecutive process rates in the table, the maximum stack emission rate is determined by interpolation. Where an operation has more than one stack, the maximum stack emission rate applies to the total of the emissions from all stacks.

C. Within technical feasibility, all particulate matter emissions to the atmosphere resulting directly from the operation of pumice, mica or perlite process equipment shall be limited to the stack outlet or outlets. Particulate matter emissions not governed by this subsection are governed by Subsection D.

D. No person owning or operating pumice, mica or perlite process equipment shall permit, cause, suffer or allow any material to be handled, transported, stored or disposed of, or a building or road to be used, constructed, altered or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne.

E. As used in this regulation, "Process Weight" means the total of all materials including solid fuel but not including liquid or gaseous fuel or combustion air introduced into any specific process. The process rate per hour is derived by dividing the total process weight by the number of hours in the complete operation, excluding any time during which the

equipment is idle.

(51.21) 506. Non-ferrous Smelters - Particulate Matter

A. No person owning or operating a non-ferrous smelter shall permit, cause, suffer or allow particulate matter emissions to the atmosphere in excess of .35 grains per average sampled cubic foot of discharge gas at standard temperature and pressure.

B. After April 30, 1974, no person owning or operating a non-ferrous smelter shall permit, cause, suffer or allow particulate matter emissions to the atmosphere in excess of .03 grains per average sampled cubic foot of discharge gas at standard temperature and pressure.

(51.5) 507. Oil Burning Equipment - Particulate Matter

No person owning or operating oil burning equipment having a heat input of greater than 1,000,000 million British Thermal Units per year per unit shall permit, cause, suffer or allow particulate matter emissions to the atmosphere in excess of .005 pounds per million British Thermal Units of heat input.

(51.14) 601. Regulation Governing Emission from Kraft Mills

Kraft mills means any industrial operation which uses for a cooking liquor an alkaline solution containing sulfur compounds in its pulping process.

A. No person shall permit, cause, or suffer or allow the daily average emission of Total Reduced Sulfur from a recovery furnace stack to exceed 0.1 pounds of sulfur per ton of equivalent air dried kraft pulp expressed as H_2S on a dry gas basis, or 4.0 pounds of particulate matter per ton of pulp on the same basis. A recovery furnace stack means the stack from which the products of combustion are emitted to the ambient air from the recovery furnace.

B. No person shall permit, cause, suffer or allow the daily average emission of particulate matter from lime kilns to exceed one pound per ton of equivalent air dried kraft pulp.

C. No person shall permit, cause, suffer or allow the daily average emission of particulate matter from smelt tanks to exceed one-half pound per ton of air dried kraft pulp.

D. No person shall permit, cause, suffer or allow the daily average emission of Total Reduced Sulfur from any and all operations of a kraft mill to exceed 0.2 pounds per ton of air dried kraft pulp.

(51.6) 602. Coal Burning Equipment - Sulfur Dioxide

A. No person owning or operating new coal burning equipment having a power generating capacity in excess of 25 megawatts or a heat input of greater than 250 million British Thermal Units per hour shall permit, cause, suffer or allow sulfur dioxide emissions to the atmosphere in excess of .34 pounds per million British Thermal Units of

heat input.

B. No person owning or operating existing coal burning equipment shall permit, cause, suffer or allow sulfur dioxide emissions to the atmosphere:

1. after July 31, 1977, in excess of 35 percent by weight of the sulfur dioxide which would be produced upon combustion of the coal prior to any pretreatment if the coal burning equipment has a rated heat capacity greater than 250 million British Thermal Units (higher heating value) and less than 3,000 million British Thermal Units (higher heating value) per hour; or

As used in this subsection, "pretreatment" means washing or any other method of removing sulfur from the coal prior to its combustion and does not include crushing or blending operations.

C. As used in this regulation:

1. "New coal burning equipment" means coal burning equipment the construction of which is commenced after September 1, 1971;

2. "existing coal burning equipment" means coal burning equipment that was fully constructed and operational or under construction prior to September 1, 1971;

3. "construction" means fabrication, erection, or installation of an affected facility; and

4. "commenced" means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a binding agreement or contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

D. Compliance with this section shall be determined by a method consistent with the manual method of sampling for sulfur dioxide set forth by the Environmental Protection Agency at 36 Federal Register 24882 - 24891 or any other method receiving prior approval by the department.

E. After July 1, 1977, no person owning or operating existing coal burning equipment subject to this regulation shall permit, cause, suffer or allow operation of the existing coal burning equipment without normally maintaining in good operating condition at least one monitor, approved by the department, which shall continuously measure and record sulfur dioxide concentrations in the gases within the stack from which the gases are released to the atmosphere. Instruments and sampling systems installed and used pursuant to this section shall be calibrated in accordance with the methods prescribed by manufacturer's recommended zero adjustment and calibration check procedures at least once every 24 hours of operation, unless the manufacturer specifies or recommends calibration checks more frequently, in which case the manufacturer's specifications or recommendations shall be followed. The reference method shall be consistent with the method for manual sampling of sulfur dioxide specified in this section.

F. To aid the department in determining compliance with this section persons owning or operating coal burning equipment subject to this section shall, after July 1, 1977, submit quarterly reports to the department for the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31 of each year, each report to be received by the department within 45 days of the end of the quarterly period. The quarterly reports shall contain the following:

1. hourly averages of the concentrations of sulfur dioxide, expressed in parts per million, in the gases which are being emitted to the atmosphere, except for periods of instrument calibration and zero adjustments;
2. hourly averages of the percent excess oxygen in the gases coming from the coal burning equipment;
3. rate of heat input (higher heating value) into the coal burning equipment determined at least once daily; and
4. percent sulfur and heat content (higher heating value) of the coal utilized by the coal burning equipment determined at least once daily.

The department may, upon the request of the owner or operator, change the reporting requirements specified in this subsection.

G. No person owning or operating coal burning equipment subject to this section shall permit, cause, suffer or allow utilization of a by-pass around the sulfur dioxide control device or devices except while operating under the provisions of Air Quality Control Regulation Number 801 - Upset, Breakdown or Scheduled Maintenance, and complying with the requirements of that regulation.

(51.7) 604. Gas Burning Equipment - Nitrogen Dioxide

A. No person owning or operating new gas burning equipment having a heat input of greater than 1,000,000 million British Thermal Units per year per unit shall permit, cause, suffer or allow nitrogen dioxide emissions to the atmosphere in excess of .2 pounds per million British Thermal Units of heat input.

B. After December 31, 1974, no person owning or operating existing gas burning equipment having a heat input of greater than 1,000,000 million British Thermal Units per year per unit shall permit, cause, suffer or allow nitrogen dioxide emissions to the atmosphere in excess of .3 pounds per million British Thermal Units of heat input.

C. As used in this regulation:

1. "new gas burning equipment" means gas burning equipment that is fully constructed and operational after thirty days after this regulation is filed under the State Rules Act; and

2. "existing gas burning equipment" means gas burning equipment that is fully constructed and operational within thirty days after this regulation is filed under the State Rules Act

(51.6) 605. Oil Burning Equipment - Sulfur Dioxide

No person owning or operating oil burning equipment having a heat input of greater than 1,000,000 million British Thermal Units per year per unit shall permit, cause, suffer or allow sulfur dioxide emissions to the atmosphere in excess of .34 pounds per million British Thermal Units of heat input.

(51.7) 606. Oil Burning Equipment - Nitrogen Dioxide

No person owning or operating oil burning equipment having a heat input of greater than 1,000,000 million British Thermal Units per year per unit shall permit, cause, suffer or allow nitrogen dioxide emissions to the atmosphere in excess of .3 pounds per million British Thermal Units of heat input.

(51.18) 651. Sulfuric Acid Plants - Sulfur

A. After December 31, 1972, no person owning or operating an existing sulfuric acid plant except those plants manufacturing sulfuric acid from H_2S gas, having an output capacity of 200 tons per day or less shall permit, cause, suffer or allow sulfur emissions to the atmosphere in excess for a 24 hour average of five pounds of sulfur for every one hundred pounds of sulfur introduced into the plant.

B. After December 31, 1972, no person owning or operating an existing sulfuric acid plant manufacturing sulfuric acid from H_2S gas, having an output capacity of 200 tons per day or less shall permit, cause, suffer or allow sulfur emissions to the atmosphere in excess for a 24 hour average of seven pounds of sulfur for every one hundred pounds of sulfur introduced into the plant.

C. After December 31, 1972, no person owning or operating an existing sulfuric acid plant having an output capacity of greater than 200 tons per day shall permit, cause, suffer or allow sulfur emissions to the atmosphere in excess for a 24 hour average of three pounds of sulfur for every one hundred pounds of sulfur introduced into the plant.

D. No person owning or operating a new sulfuric acid plant shall permit, cause, suffer or allow sulfur emissions to the atmosphere in excess of two pounds of sulfur for every one hundred pounds of sulfur introduced into the plant.

E. As used in this regulation:

1. "sulfur" means elemental sulfur and the sulfur component of any sulfur mixtures or compound;

2. "existing sulfuric acid plant" means a sulfuric acid plant,

the construction or modification of which is commenced prior to the publication of notice of hearing of this regulation as proposed; and

3. "new sulfuric acid plant" means a sulfuric acid plant, the construction or modification of which is commenced after the publication of notice of hearing of this regulation as proposed.

F. This regulation shall not apply to sulfuric acid plants that use sulfuric acid as SO₂ control systems.

(51.11) 652. Non-ferrous Smelters - Sulfur

A. After December 31, 1974, no person owning or operating an existing non-ferrous smelter shall permit, cause, suffer or allow sulfur emissions to the atmosphere in excess of forty pounds of sulfur for every one hundred pounds of sulfur fed to the smelter.

B. After December 31, 1974, no person owning or operating a new non-ferrous smelter shall permit, cause, suffer or allow sulfur emissions to the atmosphere in excess of ten pounds of sulfur for every one hundred pounds of sulfur fed to the smelter.

C. As used in this regulation:

1. "sulfur" means elemental sulfur and the sulfur component of any sulfur mixtures or compound;

2. "existing non-ferrous smelter" means a non-ferrous smelter, the construction or modification of which is commenced prior to the publication of notice of hearing of this regulation as proposed; and

3. "new non-ferrous smelter" means a non-ferrous smelter, the construction or modification of which is commenced after the publication of notice of hearing of this regulation as proposed.

D. On or before December 31, 1972, and each year thereafter on or before December 31, the Environmental Improvement Agency and any person owning or operating a non-ferrous smelter shall report to the Board the sulfur emissions from existing non-ferrous smelters, the controls thereon and any technological advances in the field of control of such sulfur emissions. Prior to December 31, 1975, the Environmental Improvement Board may have a further hearing to determine whether this regulation should be modified.

(5.0) 701. Procedure for Requesting a Variance - Hearing

A. Definition. As used in this regulation, "petitioner" means a person seeking a variance from a regulation of the board or limitation prescribed under the Air Quality Control Act pursuant to Section 12-14-8, NMSA, 1953 Comp.

B. Petitions

1. Any person seeking a variance from a regulation of the board or from the limitations prescribed under the Air Quality Control Act pursuant to Section 12-14-8, NMSA, 1953 Comp., shall do so by filing a written petition with the secretary in care of the director. Petition forms may be obtained from the environmental services division of the department.

2. Petitions shall:

- (a) state the petitioner's name and address;
- (b) state the date of the petition;
- (c) describe the facility or activity for which the variance is sought;
- (d) state the address or description of the property upon which the facility is located;
- (e) identify the regulation of the board or limitation prescribed under the Air Quality Control Act from which the variance is sought;
- (f) state in detail the extent to which the petitioner wishes to vary from the regulation or limitation;
- (g) state why the petitioner believes the variance is justified; and
- (h) state the period of time for which the variance is desired.

3. The petitioner may submit with his petition any relevant documents or material which the petitioner believes would support his petition.

C. Action by Secretary

1. Within forty-five (45) days after receipt of the variance petition, the secretary shall make written recommendation to the board and mail a copy of the recommendation to the petitioner. The secretary may, when the circumstances justify, extend the period of time by which he must submit his recommendation to the board. The secretary shall notify the board and the petitioner of the length of the extension.

2. The secretary's recommendation shall:

- (a) state the date that it is made;
- (b) state the secretary's recommendation; and
- (c) state the secretary's reasons for the recommendation.

D. Action by Board

1. Within four (4) days after the next regularly scheduled board meeting following the date of the secretary's recommendation:

- (a) if the board initially favors the granting of a variance, the director shall notify the petitioner by certified mail

of the date, time, and place of the public hearing; or

(b) if the board is initially opposed to the granting of a variance, the director shall notify the petitioner by certified mail of the board's opposition, the reasons for its opposition, and the fact that no public hearing will be held unless the petitioner requests one. The notice shall also inform the petitioner of the date by which he must request a public hearing.

2. If the petitioner fails to request a public hearing in writing within fifteen (15) days of the date the notice of the board's opposition is received by him, the petition shall be deemed denied with prejudice.

3. If the petitioner makes a timely request for a public hearing, the director shall, within five (5) days of the date of the receipt of the request, notify the petitioner by certified mail of the date, time, and place of the hearing.

E. Notice.

1. At least seven (7) days prior to each hearing date, the director shall publish notice of the date, time, place and subject of the variance hearing in a newspaper of general circulation in the county in which the facility is located and in a newspaper of general circulation in the state.

2. The director shall maintain a file of persons interested in variance hearings and shall make a reasonable effort to notify them by mail of the date, time, place, and subject of scheduled public hearings.

F. Hearings - Actions by Board - Written Order

1. Public hearings shall be held before the board not less than fifteen (15) days nor more than forty-five (45) days from the date the director mails the notice of the hearing to the petitioner.

2. Public hearings shall be held in Santa Fe unless the board and the petitioner agree upon another site in the state.

3. The board may designate a hearing officer to take evidence at the hearing.

4. A record shall be made at each hearing, the cost of which shall be borne by the department. Transcript costs shall be paid by those persons requesting transcripts. If the hearing is conducted by a hearing officer designated by the board, the cost of providing transcripts to the board members shall be borne by the department.

5. In variance hearings, the technical rules of evidence and the rules of civil procedure shall not apply, but the hearings shall be conducted so that all relevant views are amply and fairly presented without undue repetition. The board may require reasonable substantiation of statements or records tendered and may require any view to be stated in writing when the circumstances justify.

6. The board shall allow all persons a reasonable opportunity at a hearing to submit written and oral evidence and arguments and to introduce exhibits.

7. The petitioner and the board shall have the right to call and examine witnesses, introduce exhibits, and cross-examine persons who testify.

8. The board shall allow reasonable cross-examination of persons who testify at a hearing by persons who have submitted a written request to do so. Requests must be submitted to the director by 4:00 p.m. on the day before each hearing.

9. A petitioner may represent himself at the hearing or be represented by any other individual.

10. The board may grant the requested variance, in whole or in part, or may deny the variance. All action taken by the board shall be by written order by the next regularly scheduled board meeting after each hearing, or, if the hearing was conducted before a hearing officer, by the next regularly scheduled board meeting after the date the transcript of the hearing is available. A copy of the order shall be mailed to the petitioner. All persons appearing or represented at the hearing shall be mailed notice of the board's action.

11. Orders of the board shall:

- (a) state the petitioner's name and address;
- (b) state the date the order is made;
- (c) describe the facility for which the variance is sought;
- (d) identify the regulation of the board or limitation prescribed under the Air Quality Control Act from which the variance was sought;
- (e) state the decision of the board;
- (f) if a variance is granted, state the period of time for which it is granted; and
- (g) state the reasons for the board's decision.

12. The director shall maintain a file of all orders made by the board. The file shall be open for public inspection.

G. Effect of Order of Board - Failure to Appear at Hearing

1. An order of the board is final and bars the petitioner from petitioning for the same variance without special permission from the board. The board may consider, among other things, the development of new information and techniques to be sufficient justification for a second petition.

2. If the petitioner, or his authorized representative, fails to appear at the public hearing on the variance petition, the board shall proceed with the hearing on the basis of the petition.

H. Stay of enforcement

1. Subject to the emergency provisions of Section 12-14-9, NMSA, 1953 Comp., while a variance petition is pending and before the board takes final action on the petition, the department may not enforce the corresponding regulation of the board from which the variance is sought unless, in the opinion of the director:

(a) enforcement is reasonably necessary to protect the public interest of New Mexico;

(b) the variance petition was not filed in good faith;
or

(c) the petitioner is causing or contributing to air pollution to a greater degree than that requested by the variance petition.

2. The petitioner may submit with his variance petition a statement showing why he believes that nonenforcement is in the public interest of New Mexico.

3. The director's opinion on the questions of public interest and good faith is discretionary and not subject to review.

4. The director may re-examine his opinion at any time and, when the circumstances justify, make a different determination.

5. Subsection H does not apply to any subsequent petitions for the same variance by the same petitioner, except as the director may otherwise determine.

I. Timeliness

1. When the last day for performing an act falls on Saturday, Sunday, or a legal, state, or national holiday, the performance of the act is timely if performed on the next succeeding day which is not a Saturday, Sunday, or a legal, state, or national holiday.

2. All matters required to be filed or mailed under this regulation are timely if deposited in the United States mail on or before the required date, except as provided under Subsection F (8).

(3.0)

702. Permits

A. Any person constructing or modifying any new source of an air contaminant, which source, if it were uncontrolled, would result in an emission of the contaminant greater than ten pounds per hour or twenty-five tons per year or would result in the emission of a hazardous air pollutant, must obtain a permit from the department prior to the construction or modification. Applications for permits shall be filed not less than sixty days prior to the commencement of the construction or modification. The relocation of temporary installations is not subject to this section.

B. In the event of an emergency, upon oral or written request, the department may grant temporary permission to commence construction prior to the filing of an application for a permit. Confirmation of the permission shall be made in writing by the department. The permission shall expire within thirty days of the date of the written confirmation if the requestor has not filed an application for a permit in accordance with the provisions of Subsection D of this section. The permission shall be deemed revoked in the event that the application for a permit is denied.

C. If a source consists of more than one unit, a separate permit must be obtained for each unit which is not substantially interrelated with another unit. A common connection leading to ductwork, pollution control equipment or a single stack shall not, by itself, constitute a substantial interrelationship.

D. Any person seeking a permit shall do so by filing a written application with the director. Applications shall:

1. be made on forms furnished by the department;
2. state the applicant's name and address;
3. state the date of the application;
4. describe the nature and quantities of any air contaminants the completed construction or modification will emit;
5. be accompanied by:
 - (a) a map, such as the Topographic Quadrangle map published by the United States Department of the Interior Geological Survey or equivalent map, showing the exact location of the proposed construction or modification;
 - (b) a process flow sheet, including a material balance, of the processing and combustion plant;
 - (c) a description of the equipment to be used for air pollution control, including a process flow sheet, or, if the department so requires, layout and assembly drawings;
 - (d) a description of the equipment or methods to be used for emission measurement; and
 - (e) such information as the department may require relating to the environmental impact of the proposed source or modification if the department determines that the granting of the permit might constitute a major state action significantly affecting the quality of the human environment.
6. state the expected normal operating schedule of the completed construction or modification in terms of hours per day, days per week, weeks per month and months per year;

7. contain such other relevant information as the department may reasonably require, and

8. be signed by the applicant or his authorized representative.

F. For applications for the construction and modifications of new sources to be located within Bernalillo County, the department may seek the aid of the air quality control staff of the joint Albuquerque-Bernalillo County Air Quality Control Board.

G. The department shall:

1. make available for public inspection a list of all applications for permits;

2. allow all interested persons fifteen days from the date an application is filed to submit written comments on the application; and

3. mail written notice of the action taken on a permit application to those persons who submitted written comments on the application.

H. The department shall within thirty days after the filing of an application for a permit either grant the permit, grant the permit subject to conditions or deny the permit. If the department denies a permit or grants the permit subject to conditions, the department shall notify the applicant by certified mail of the action taken and the reasons therefor. If the department grants a permit, the department shall mail the permit to the applicant by certified mail.

I. The department may deny any application for a permit if:

1. it appears that the construction or modification will not meet applicable regulations;

2. the new source will emit a hazardous air pollutant or air contaminant in excess of a federal standard of performance or a state regulation;

3. it appears that the new source may result in any federal or state ambient air standard being exceeded;

4. any provision of the Air Quality Control Act will be violated; or

5. it appears that the construction of the new source will not be completed within a reasonable time.

J. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act and any applicable regulations of the board.

K. The department may impose any reasonable conditions upon a permit, including a schedule of construction and conditions requiring the source to be provided with:

1. sampling ports of a size, number and location as the department may require;
2. safe access to each port;
3. instrumentation to monitor and record emission data; and
4. any other reasonable sampling and testing facilities.

(3.0)

703. Registration of Air Contaminant Sources

A. By February 1, 1973, the owner or operator of any commercial or industrial stationary source which emits more than two thousand pounds of any air contaminant per year must obtain a registration certificate for the source from the department. The owner or operator of any commercial or industrial stationary source constructed after August 1, 1972, must obtain a registration certificate for the source from the department within one hundred eighty days after the initial startup date of the source.

B. Any person seeking a registration certificate shall do so by filing a written application with the director. Applications shall:

1. be made on forms furnished by the department;
2. state the applicant's name and mailing address;
3. state the name and address of the source;
4. state the date of the application;
5. describe the nature and amounts of any air contaminants emitted from the source;
6. describe the nature of all processes and equipment which produce air contaminant emissions;
7. describe the nature and effectiveness of any air pollution control equipment used;
8. state the fuel used for the generation of heat, steam and power;
9. state the normal operating schedule of the source in terms of hours per day, days per week, weeks per month and months per year;
10. contain such other relevant information as the department may reasonably require, and
11. be signed by the applicant or his authorized representative.

C. Upon the receipt of the information required to be submitted by Subsection B of this section, the department shall issue the registration certificate.

E. Any owner or operator who is subject to this section and intends to shut down a source for a period of one year or more shall notify the department in writing of the actual date of shutdown within fifteen days after the shutdown date.

F. Any owner or operator who is subject to this section and relocates a temporary installation shall notify the department in writing of the date and site of the relocation within fifteen days of the date of relocation.

G. The department may:

1. exempt from the requirement of registration any stationary source or class of stationary sources;

2. reduce the informational requirements contained in Subsection B of this section for any stationary source or class of stationary sources.

3. provide for the filing of a single application and issuance of a single registration certificate for two or more stationary sources owned or operated by the same person; and

4. extend the deadline for registration for any source or class of sources.

H. As used in this section, "stationary source" means any building, structure, facility or installation which emits or may emit any air contaminant.

L. The department may grant a conditional permit subject to the later filing of information required by the department relating to the environmental impact of a proposed source or modification if the department has otherwise determined that the source or modification will meet all applicable regulations and will not cause any state or federal ambient air standard to be exceeded. The department shall either grant or deny the permit finally within thirty days of the date the information is filed. The information shall be filed within such time as the conditional permit may require.

M. The department may cancel a permit if the construction is not commenced within one year from the date of issuance or, if during the construction, work is suspended for a total of one year.

N. Thirty days prior to the cancellation of a permit, the department shall notify the permittee by certified mail of the impending cancellation. The department shall notify the permittee by certified mail of the cancellation of his permit and the reasons therefor. A permittee whose permit has been canceled may request a hearing before the board. The request must be made in writing to the director within thirty days after notice of the department's action has been received by the permittee. Unless a timely request for hearing is made, the decision of the department shall be final.

O. If a timely request for hearing is made, the board shall hold a hearing within thirty days after receipt of the request. The department shall notify the permittee by certified mail of the date, time and place of the hearing. In the hearing the burden of proof shall be upon the permittee. The board may designate a hearing officer to take evidence in the hearing. Based upon the evidence presented at the hearing, the board shall sustain, modify or reverse the action of the department.

P. Any owner or operator subject to this section shall notify the department in writing of the:

1. anticipated date of initial startup of a source not more than sixty days nor less than thirty days prior to the date; and
2. actual date of initial startup of a source within fifteen days after the startup date.

Q. Within sixty days after achieving the maximum production rate at which the new source will be operated but not later than one hundred eighty days after initial startup of the new source, the owner or operator of the new source shall conduct a performance test in accordance with methods and under operating conditions approved by the department and furnish the department a written report of the results of the test.

R. Upon application by any person or group of persons, the board may exempt from any or all of the requirements of this section any source or class of sources which the board finds will not unreasonably degrade the ambient air. Exemptions may be granted only at public meetings of the board. No exemption may be granted for a source or class of sources if the source or any one of the sources within the class, if it were uncontrolled, would result in an emission of an air contaminant greater than twenty-five tons per year. Exemptions may apply statewide or regionally and may be revoked by the board at any public meeting.

S. This section does not apply to stationary sources, the construction or modification of which was commenced prior to August 31, 1972.

T. As used in this section:

1. "new source" means any stationary source, the construction or modification of which is commenced after the filing of a regulation applicable to the stationary source or after the filing of an ambient air standard applicable to the area where the stationary source is to be located.
2. "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air contaminant emitted by the stationary source or which results in the emission of any air contaminant not previously emitted;
3. "construction" means fabrication, erection or installation of an affected facility;

4. "hazardous air pollutant" means an air contaminant which has been classified as a hazardous air pollutant by the administrator of the national environmental protection agency; and

5. "stationary source" means any building, structure, facility or installation which emits or may emit any air contaminant.

U. As used in Subsection M of this section, "commencement" means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a binding contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction. Otherwise as used in this section, "commencement" means that an owner or operator has undertaken a continuous program of construction.

(9.0)

704. Source Surveillance

A. The owner or operator of any stationary source of an air contaminant shall, upon notification by the department, maintain records of the nature and amounts of emissions, to which an air quality control emission regulation applies, from the source and any other information as may be deemed necessary by the department to determine whether the source is in compliance with applicable regulations.

B. The information recorded shall be summarized and reported to the department, on forms furnished by the department, and shall be submitted within forty-five days after the end of the reporting period. Reporting periods are November 1 through April 30 and May 1 through October 31 or such other periods as the department may deem necessary. Information reported to the department shall be signed by the person responsible for its accuracy.

C. Emission data obtained by the department shall be correlated with applicable emission limitations and other control measures and be made available to the public during normal business hours.

(6.0)

705. Schedules of Compliance

A. No person shall operate a stationary or mobile source of an air contaminant to which applies an Air Quality Control Regulation that implies an emission limitation or other requirement upon the source on a specific date which occurs after January 1, 1974, and more than one year from the effective date of the regulation, unless the source is operating under a schedule of compliance adopted by the board pursuant to this section or unless the person operating the stationary or mobile source has certified to the board that the source is complying with the requirements of the regulation. As used in this section, "effective date" means thirty days after the filing of the adopted regulation, as provided in Section 12-12-13.F., NMSA, 1953, of the New Mexico Environmental Improvement Act.

B. Upon petition, the board may, pursuant to the requirement of Subsection A, adopt at any public meeting a schedule of compliance and exempt that schedule of compliance from the remaining requirements of this section if:

1. the petitioner has secured the federal Environmental Protection Agency's approval of the offered schedule of compliance or part thereof; and

2. the petitioner, by complying with the provisions of the federally approved schedule of compliance, will meet the time and emission requirements of the applicable state regulations.

C. Any person seeking the board's approval of a schedule of compliance shall file a written petition with the director by January 1, 1974, or within ninety days of the effective date of the regulation to be complied with, whichever is later. As used in this section, "effective date" means thirty days after the filing of the adopted regulation, as provided in Section 12-12-13.F., NMSA, 1953, of the New Mexico Environmental Improvement Act.

D. At a public meeting, pursuant to a written request, the board may extend the time period for the filing of a petition for a schedule of compliance.

E. Petitions shall:

1. state the petitioner's name and address;

2. state the date of the petition;

3. describe the facility for which a schedule of compliance is sought;

4. state the address or description of the property upon which the facility is located;

5. state the regulation and the applicable provisions of the regulation for which a schedule of compliance is sought;

6. include, to the extent practicable, the following increments of progress:

(a) a date or dates by which contracts for each major phase of emission control systems or process modification, or orders for their components parts, will be awarded;

(b) a date or dates of initiation of each major phase of on-site construction or installation of emission control equipment or process modification;

(c) a date or dates by which each major phase of on-site construction or installation of emission control equipment or process modification is to be completed; and

(d) a date or dates by which final compliance is to be achieved.

7. describe in detail the methods or devices to be used to achieve compliance with the applicable regulation; and

8. state why the petitioner believes the schedule of compliance should be approved.

F. The department shall make available for public inspection a copy of each petition at its central office in Santa Fe and at its field office which is located nearest to the source in the same air quality control region wherein the source is located.

G. The petitioner may submit with his petition any relevant documentation or material which the petitioner believes would support his petition.

H. The director, within ten days of receipt of a copy of the petition filed with the board, shall notify the petitioner by certified mail of the date, time and place of the public hearing on the petition for a schedule of compliance.

I. At least thirty days prior to the hearing date, the director shall publish notice of the date, time, place and subject matter of the hearing in a newspaper of general circulation in the county in which the facility is located and in a newspaper of general circulation in the state.

J. The director shall maintain a file of persons interested in schedule of compliance hearings and shall make a reasonable effort to notify those persons by mail of the date, time, place and subject matter of the hearing.

K. Public hearings shall be held by the board not more than sixty days from the date the director mails the notice of the hearing to the petitioner.

L. Public hearings shall be held in Santa Fe unless the department and the petitioner agree upon another site in the state.

M. The board may designate a hearing officer to take evidence at the hearing.

N. A record shall be made at each hearing, the cost of which shall be borne by the department. Transcript costs shall be paid by those persons requesting transcripts except that the department shall bear the cost of any transcript furnished to members of the board and the Environmental Protection Agency.

O. In schedule of compliance hearings, the technical rules of evidence and the rules of civil procedure shall not apply, but the hearings shall be conducted so that all relevant views are amply and fairly presented without undue repetition. The board may require reasonable substantiation of statements or records tendered and may require any view to be stated in writing when the circumstances justify.

P. At the hearing, the board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and shall allow reasonable cross-examination of witnesses testifying at the hearing.

Q. A petitioner may represent himself at the hearing or be represented by any other individual.

R. On the basis of the petition and the information developed at the public hearing, the board shall, within 60 days of receipt of the transcript, adopt a schedule of compliance. Schedules of compliance shall:

1. state the petitioner's name and address;
2. state the date of adoption of the schedule of compliance;
3. describe the facility to which the schedule of compliance applies;
4. identify all sources within the facility and all air contaminants emitted from the facility to which the schedule of compliance applies;
5. state the address or description of the property upon which the facility is located;
6. identify the regulatory provisions covered by the schedule of compliance;
7. state the increments of progress that must be followed by the petitioner to achieve compliance with the applicable regulations as expeditiously as practicable;
8. state any conditions which may apply to the schedule of compliance; and
9. state the board's reasons for the increments of progress and conditions imposed.

S. Any petitioner who has obtained a schedule of compliance from the board shall certify to the board, within five days after the deadline for each increment of progress, whether or not the required date has been met.

T. If it appears to the holder of an approved schedule of compliance that he will be unable to meet any increment of progress, he shall apply to the board for a modification of the schedule thirty days prior to the first increment date that will not be met. The application for modification shall state which dates will not be met and the reasons therefor. If the application does not request a modification of the final compliance date for meeting the applicable regulations, the board shall act upon the application at its next public meeting. If the application requests a modification of the final compliance date, the board shall hold a public

hearing in accordance with Subsections G through P of this section and act upon the application on the basis of the information developed at the hearing.

(18.0) 706. Air Quality Maintenance Areas

A. The counties of Bernalillo, Chaves, Dona Ana, San Juan, and Santa Fe are designated as Air Quality Maintenance Areas. Air pollutants for which these areas are designated are:

1. carbon monoxide, photochemical oxidants, and total suspended particulate matter within Bernalillo county;
2. carbon monoxide and total suspended particulate matter within Dona Ana and Santa Fe counties; and
3. carbon monoxide within Chaves and San Juan counties.

B. As used in this section, "Air Quality Maintenance Area" means that area which, due to current air quality or projected growth, has the potential for exceeding a national ambient air quality standard within ten years from the date of adoption of this regulation.

(7.0) 801. Upset, Breakdown or Scheduled Maintenance

Operation of any equipment or air pollution control devices or apparatus so as to cause emissions of air contaminants in excess of limits set by these regulations which is a direct result of upset conditions or breakdown or is a direct result of the shutdown of such equipment or air pollution control devices or apparatus for scheduled maintenance, is not a violation of these regulations provided:

A. The occurrence has been reported to the Department at least 24 hours before any scheduled maintenance, and the scheduled maintenance is performed where possible during times specified by the Department as favorable for atmospheric ventilation.

B. The occurrence has been reported to the Department as soon as reasonably possible in the case of an upset or breakdown, but in no case more than 24 hours after occurrence.

C. Repairs are made with maximum, reasonable effort, including use of off-shift labor, overtime, or work periods of nonoperation.

D. The emission of air contaminants is minimized as much as possible during the scheduled maintenance, upset or breakdown.

E. The air contaminant is not of a nature or quantity which would endanger public health or safety.

F. Upsets or breakdowns do not occur with such frequency that careless, marginal or unsafe operation is indicated.

(4.0) 901. To Control Emissions Leaving New Mexico

When emissions generated from sources in New Mexico cross the state boundary line, such emissions shall not exceed the standards and regulations of the receiving state, provided, regulations are in effect and reciprocal action is taken by the receiving state.

(9.0) 1001. Sampling Equipment

When directed by the Board, or its designated representative, the necessary openings for sampling equipment shall be provided on stacks or other openings through which emissions are released to the atmosphere.

(2.0) 1101. Severability

If any part or application of the air pollution control regulations is held invalid, the remainder of its application to other situations or persons shall not be affected.

(2.0) 1201. Effective Date

As to new equipment and new air pollution control devices or apparatus, the Air Quality Control Regulations shall be in effect 30 days after the regulations are filed with the State Records Center. These regulations shall be in effect 30 days after filing with the State Records Center, except that existing operations equipment and existing air pollution control devices shall be brought into conformance by July 1, 1970, unless otherwise specified in the regulations.

(2.0) 1301. Conflicts

Nothing in these Ambient Air Quality Standards and Air Quality Control Regulations is intended to permit any practice which is a violation of any statute, ordinance or regulation.

AIR POLLUTION CONTROL REGULATIONS OF THE
ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

(1.0)

Section 1. Definitions. The following words and phrases have the following meanings unless the context in which they are used requires otherwise:

1.01 "Air Contaminant" means any substance, including but not limited to any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any combination thereof, or any decay or reaction product thereof.

1.02 "Air Pollution" means the emission, except as such emission occurs in nature, into the outdoor atmosphere of one or more air contaminants in such quantities and duration as may with reasonable probability injure human health, animal or plant life, or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property.

1.03 "Air Pollution Potential Index" (APPI) means a number on a scale ranging from 0 to 100 indicating the state of the lower atmosphere from the ground to the top of the radiation temperature inversion. The number 0 indicates that the state of the lower atmosphere is such that the likelihood of air contaminants being held close to the ground is rare. As the index number increases from 0 to 100, the atmospheric temperature inversion and other meteorological factors become such that air contaminants will be concentrated in the air close to the ground.

The Air Pollution Potential Index is calculated using the U.S. Weather Service 1200 Greenwich Mean Time upper air soundings or other upper air soundings of temperature lapse rate, relative humidity, and wind speed and direction. The Air Pollution Potential Index is calculated from this and other meteorological data.

Method of Calculation: Using the equation,

$$(T_2 - T) (100^\circ - 0^\circ) (RH) (W_f) = APPI.$$

T_1 = Temperature at base of inversion.

T_2 = Temperature at top of inversion.

θ = Angle inversion makes with horizontal pressure line. Use WBAN31/A Form 610-14A revised (7064).

RH = Average Relative Humidity through the inversion layer.

W_f = Wind speed factor. Average wind speed through the inversion.

Use the following table.

<u>Wind Speed in Knots</u>	<u>Factor</u>
0-1	1.0
2-5	.9
6-10	.6
11-20	.3
20	.1

1.04 "Board" means the joint board established by the City of Albuquerque and Bernalillo County responsible for the adoption, promulgation and administration of the Air Pollution Control Regulations and Ambient Air Quality Standards and for the enforcement of the Air Pollution Control Regulations.

1.05 "Chemical Processes" means any manufacturing processing operation in which one or more changes in chemical composition, chemical properties or physical properties are involved, to include but not limited to: pulp and paper mills; iron and steel mills; petroleum refineries; smelters; inorganic chemical manufacturers such as fertilizer, gypsum, lime, cement or asbestos manufacturers and organic chemical manufacturers such as synthetic rubber or acid manufacturers.

1.06 "Coal Burning Equipment" Any device used for the burning of coal for the primary purpose of producing heat or power by indirect heat transfer in which the products of combustion do not come into direct contact with other materials.

1.07 "Crematory" means a device for cremating human remains.

1.08 "Environmental Health Department" means the Environmental Health Department of the City of Albuquerque, New Mexico.

1.09 "Fugitive Dust" means solid airborne particulate matter emitted from any source other than a stack, flue or duct.

1.10 "Grain" means that unit of weight which is equivalent to 0.0648 grams.

1.11 "Incinerator" means any device intended or used for burning waste material.

1.12 "Inedible Animal By-product Processing" means operations primarily engaged in rendering, cooking, drying, dehydrating, digesting, evaporating, and/or concentrating of animal proteins and fats.

1.13 "Kraft Mill" means any pulping process which uses, for a cooking liquor, an alkaline solution.

1.14 "Open Burning" means any burning from which the products of combustion are discharged directly into the open air without passing through a chimney, flue, stack or duct.

- 1.15 "Particulate Matter" means any material except uncombined water which exists in a finely divided form as a liquid or solid at standard temperature and pressure.
- 1.16 "Pathological Destructor" means a device for the destruction by burning of diseased tissue or disease producing matter.
- 1.17 "Person" means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or their legal representatives, agents or assigns.
- 1.18 "ppm" means part per million by volume.
- 1.19 "Process Equipment" means any equipment used for storing, handling, transporting, processing, or changing any materials whatever but excluding that equipment specifically defined in these Regulations as incinerators and includes coal burning equipment.
- 1.20 "Process Weight" means the total weight of all materials introduced into any specific process which process causes any discharge of air contaminants into the atmosphere. Solid fuels introduced into any specific process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.
- 1.21 "Process Weight Rate" means the hourly rate derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, or from the beginning to the completion of a typical portion thereof, excluding any time during which the equipment is idle.
- 1.22 "Reid Vapor Pressure" means the pressure determined according to the American Society for Testing and Materials method, ASTM-Designation: D323-58.
- 1.23 "Ringelmann Chart" means the Ringelmann smoke chart of comparative smoke densities as published by the U.S. Bureau of Mines or an equivalent Ringelmann "type" chart.
- 1.24 "Secretary" means the Secretary of the Board or his authorized representatives.
- 1.25 "Smoke" means small gas borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively of carbon, ash, and other combustible materials.
- 1.26 "Standard Conditions" means the conditions existing at a temperature of 70° Fahrenheit and pressure of 14.7 lbs. per square inch absolute.
- 1.27 "Standard Cubic Foot" means a measure of the volume of one cubic foot of gas at standard conditions.
- 1.28 "Tons/hr." means tons per hour.

1.29 "Total Reduced Sulfur" (TRS) means hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides present in a pulping process.

1.30 "Vapors" means the gaseous form of a substance normally in the liquid or solid state.

1.31 "lb/hr." means pounds per hour.

(51.13)

Section 2. Open Burning

2.01 Open burning is prohibited with the following exceptions:

A. Open burning is allowed for the following purposes: religious, ceremonial, educational, non-commercial cooking and recreational bonfires.

B. Open burning for the following purposes is allowed, but only between the hours of 10:00 a.m. and 4:00 p.m., with combustion to be completed or extinguished by 4:00 p.m., and then only when the Air Pollution Potential Index is under 50:

1. Fires set for the purpose of educating or training fire fighting or fire-rescue personnel;

2. Fires set on a field used for growing crops in the course of disposing of unused portions of a crop and intermingled weeds resulting from farming;

3. Burning dried-out tumbleweeds.

4. Burning weeds when necessary for the maintenance of flood control channels, irrigation ditches and drains if accomplished by using a hot flame burner; burning weeds which constitute a fire hazard if approved by the City or County appropriate authority.

C. The open burning of dry waste materials produced by the use of property for residential purposes all of which lies outside the City of Albuquerque is allowed until January 1, 1972 and thereafter is prohibited. Until January 1, 1972, such materials may be burned only between the hours of 10:00 a.m. and 4:00 p.m., with combustion to be completed or extinguished by 4:00 p.m., and then only when the Air Pollution Potential Index is under 50.

2.02 Open burning of animal waste, green plants, leaves, tar products, oil, rubber, plastic or like materials which produce smoke is prohibited even in cases where open burning is otherwise expressly allowed by this section.

(51.9)

Section 3. Incinerators

3.01 The use or operation of an incinerator on property devoted to residential uses is prohibited.

3.02 The construction, use or operation of a new incinerator on any property within the City of Albuquerque is prohibited.

3.03 The use or operation of any incinerator on any property within the City of Albuquerque after January 1, 1976, is prohibited.

3.04 Any modification, alteration, remodeling or reconstruction of any incinerator located within the City of Albuquerque which will cost an amount equalling more than 50% of the original cost of such incinerator is prohibited, and if an incinerator needing such work cannot be operated in conformance with these regulations, its further use or operation is prohibited.

3.05 Sections 3.02, 3.03 and 3.04 do not apply to crematories or pathological destructors.

3.06 No person may release or discharge into the atmosphere from any incinerator particulate matter in excess of 0.10 grains per standard cubic foot of dry exhaust gas calculated to 12% of carbon dioxide (CO₂) at standard conditions. In measuring the combustion contaminants from incinerators used to dispose of combustible refuse by burning, the carbon dioxide (CO₂) produced by combustion of any liquid or gaseous fuel shall be excluded from the calculation to 12 percent of carbon dioxide (CO₂). This regulation shall not apply to the five (5) minute time period which is necessary to bring wood-waste type incinerators up to operating temperatures.

3.07 Crematories and pathological destructors shall comply with the emission limits specified in Section 3.06 by January 1, 1972.

3.08 No person shall use or operate an incinerator between sunset and the following sunrise; unless such incinerator is equipped with a continuous monitoring and recording device as approved by the Secretary.

(50.1.2)

Section 4. Visible Air Contaminants

4.01 General. No person shall cause or allow to discharge into the atmosphere, from any source whatsoever, any air contaminants as dark or darker in shade as that designated as No. 1 on the Ringelmann Chart or of such opacity as to obscure an observer's view to a degree equal to or greater than that designated as No. 1 on the Ringelmann Chart, except as follows:

A. Emissions permitted under Section 2 of these regulations.

B. Where the presence of uncombined water is the only reason for failure to meet the limitations herein.

C. Diesel engines when -

1. Accelerating under a load may emit smoke for a maximum period of 10 seconds which is not as dark or darker in shade as that designated as No. 2 on the Ringelmann Chart or of such opacity as to

obscure the observer's view to a degree greater than that designated as No. 2 on the Ringelmann Chart; or when used in vehicles operating off public roads or highways may emit smoke for a maximum period of 15 seconds which is not as dark or darker in shade as that designated as No. 3 on the Ringelmann Chart or of such opacity as to obscure the observer's view to a degree greater than that designated as No. 3 on the Ringelmann Chart.

2. When being started cold, may emit smoke for a maximum period of 20 minutes which is not as dark or darker in shade as that designated as No. 2 on the Ringelmann Chart or of such opacity as to obscure the observer's view to a degree greater than that designated as No. 2 on the Ringelmann Chart.

D. Turbine type aircraft engines may emit smoke which is not as dark or darker in shade than that designated as No. 3 on the Ringelmann Chart until December 31, 1972; thereafter the emission shall not be as dark or darker in shade than that designated as No. 2 on the Ringelmann Chart.

E. When dry wood or paper is burned, residential fireplaces are not subject to the provisions of this section.

F. Wood-waste type incinerators may emit smoke the shade of which is not darker than that designated as No. 2 on the Ringelmann Chart or of such opacity as to obscure the observer's view to a degree greater than that designated as No. 2 on the Ringelmann Chart for a period of 5 consecutive minutes, but only once each day when such incinerator is being started.

4.02 Gasoline Engines. No person shall cause or allow the emission of any visible air contaminants into the atmosphere from any four-cycle gasoline engine except for a period of five seconds after the engine is started.

(51.1)

Section 5. Orchard Heaters

5.01 No person shall construct, place, maintain, alter, use or operate orchard heaters for frost protection or otherwise unless they are so designed or equipped and are operated or regulated, so as not to discharge into the atmosphere smoke as dark as or darker in shade as that designated as No. 1 in the Ringelmann Chart or of such opacity as to obscure the observer's view to a degree greater than that designated as No. 1 on the Ringelmann Chart.

5.02 Prohibition of Sale of Heaters. No person shall give, sell, or offer to sell for use for frost protection within the County of Bernalillo any orchard heater which does not comply with subsection 5.01 of this regulation or which cannot be modified to comply with subsection 5.01.

5.03 Inspections. All persons subject to the provisions of Section 5 shall cooperate with agents of the Environmental Health Department in performing orchard heater inspections to obtain information relating to emissions which may cause or contribute to air pollution.

5.04 Effective Date. This section becomes effective January 1, 1973.

(12.0)

Section 6. Motor Vehicle Air Pollution Emission Control Devices

6.01 No person shall remove from an operable motor vehicle any motor vehicle air pollution emission control system or device installed on or incorporated in a motor vehicle or motor vehicle engine under the requirements of any federal law or regulations.

6.02 No person shall fail to maintain in operating condition any motor vehicle air pollution emission control system or device installed on or incorporated in a motor vehicle or motor vehicle engine under the requirements of any federal law or regulation.

6.03 No person shall operate any motor vehicle which does not have installed on or incorporated in the motor vehicle or motor vehicle engine in operating condition a motor vehicle air pollution emission control system or device required by any federal law or regulation.

6.04 Section 6.01 shall not apply to motor vehicles constructed or operated as racing cars. Sections 6.02 and 6.03 shall not apply to motor vehicles constructed or operated as racing cars when they are raced off public roads or highways, or when raced on public roads or highways pursuant to permission granted by the governmental authority which owns, operates or controls such public road or highway.

6.05 Section 6 shall not apply to motor vehicles which have been constructed or modified to operate by the use of liquefied petroleum or natural gas.

(50.1)

Section 7. Dust, Sand, Particulates

7.01 General. No person shall engage in any of the following activities and activities incidental hereto without taking reasonable precautions to prevent particulate matter from becoming airborne: dismantling buildings; construction, public or private; processing sand, gravel or rock which includes crushing, sizing, screening, cleaning and mixing; operation of machinery or equipment; use of land. Reasonable precautions may include but are not limited to the use of water, vegetation or plants, paving, coverings or enclosures.

(12.0)

7.02 Unpaved Roads

A. General. In the event that the density of motor vehicle traffic on unpaved roads of any kind or description exceeds the amounts stated on the following table, such roadway shall be closed to motor vehicle traffic unless the owner or operator thereof takes reasonable precautions to effectively and substantially reduce or prevent the emission of dust into the atmosphere on account of such traffic:

Roadway Segment Length	Motor Vehicle Density	Frequency
Length of roadway segment in miles	Number of motor vehicles traveling on segment in a one hour period	Number of one hour periods in one week when density is exceeded
0 to 1/4	120	1
greater than 1/4 to 1/2	60	2
greater than 1/2	30	3

B. "Reasonable precautions" include but are not limited to paving, regular application of oil, frequent watering or any other means of equal or greater effectiveness in reducing or preventing the emission of dust.

C. If the owner or operator of a roadway does not close the roadway permanently or temporarily, dust emission abatement measures shall be commenced as soon as is possible.

D. Application of Regulation to Unpaved Parking Areas. Section 7.02 shall apply to unpaved areas used for the parking of motor vehicles. For the purpose of applying the table in Section 7.02A to unpaved parking areas, the area of the parking area shall be converted to a roadway length with a 32 foot width as follows:

$$\text{Equivalent roadway segment length in miles} = \frac{\text{total area in square feet of parking area}}{(32) (5280) \text{ square feet}} \text{ miles}$$

7.03 Removing or Disturbing Topsoil. No person shall disturb or remove topsoil from an area larger than 1/3 acre in size until first receiving a permit therefor from the Secretary. The person shall subsequently take reasonable precautions within a reasonable time to prevent particulate matter from becoming airborne because of disturbing or removing such topsoil. This does not apply to areas zoned and used for agriculture.

Applications for permits shall be made on forms prescribed by the Secretary. Such forms shall require disclosure of the following information:

- A. Name, address and telephone number of applicant.
- B. Address or legal description of property.
- C. Size of the parcel or area.
- D. Description of nature of work to be done.
- E. Time period in which work and control measures are to be done.
- F. Statement of measures to be used to control or prevent particulate matter from becoming airborne.

The permit shall be issued by the Secretary if the application form is fully and accurately filled out and if it discloses that reasonable precautions will be taken as required to prevent particulate matter from becoming airborne.

7.04 Sandblasting. No person shall conduct sand or other abrasive blasting operations without taking reasonable precautions to prevent particulate matter resulting therefore from leaving the premises upon which such work is being done. Reasonable precautions include the use of enclosures or other means of equal effectiveness in reducing or preventing the emission particulates.

7.05 Demolition Permits. No person shall demolish any building containing over 75,000 cubic feet of space without first obtaining a permit therefor from the Secretary and subsequently taking reasonable precautions to prevent particulate matter from becoming airborne on account of such activity.

Applications for permits shall be made on forms prescribed by the Secretary. Such forms shall require disclosure of the following information:

- A. Name, address and telephone number of applicant.
- B. Address or legal description of property.
- C. Size of building.
- D. Description of nature of work to be done.
- E. Time period in which work is to be done.
- F. Statement of measures to be used to control or prevent particulate matter from becoming airborne.

The permit shall be issued by the Secretary if the application form is fully and accurately filled out as required and if it discloses that reasonable precautions will be taken to prevent particulate matter from becoming airborne.

(50.1.1)

Section 8. Process Equipment

8.01 Except as otherwise provided in this section, no person shall cause or allow the emission of particulate matter to the atmosphere from process equipment in any one hour in total quantities in excess of the amount shown in the following table:

Process Wt/hr (lbs)	Maximum Weight Disch/hr (lbs)	Process Wt/hr (lbs)	Maximum Weight Disc/hr (lbs)
50	.24	3400	5.44
100	.46	3500	5.52
150	.66	3600	5.61
200	.85	3700	5.69
250	1.03	3800	5.77
300	1.20	3900	5.85
350	1.35	4000	5.93
400	1.50	4100	6.01
450	1.63	4200	6.08
500	1.77	4300	6.15
550	1.89	4400	6.22
600	2.01	4500	6.30
650	2.12	4600	6.37
700	2.24	4700	6.45
750	2.34	4800	6.52
800	2.43	4900	6.60
850	2.53	5000	6.67
900	2.62	5500	7.03
950	2.72	6000	7.37
1000	2.80	6500	7.71
1100	2.97	7000	8.05
1200	3.12	7500	8.39
1300	3.26	8000	8.71
1400	3.40	8500	9.03
1500	3.54	9000	9.36
1600	3.66	9500	9.67
1700	3.79	10000	10.00
1800	3.91	11000	10.63
1900	4.03	12000	11.28
2000	4.14	13000	11.89
2100	4.24	14000	12.50
2200	4.34	15000	13.13
2300	4.44	16000	13.74
2400	4.55	17000	14.36
2500	4.64	18000	14.97
2600	4.74	19000	15.58
2700	4.84	20000	16.19
2800	4.92	30000	22.22
2900	5.02	40000	28.30
3000	5.10	50000	34.30
3100	5.18	60000 or more	40.00
3200	5.27		
3300	5.36		

A. To use the Table take the process weight per hour, as such is defined in Section 1.20. Then find this figure on the table, opposite which is the maximum number of pounds of contaminants which may be discharged into the atmosphere in any one hour. As an example, if A has a process which emits contaminants into the atmosphere and which process takes 3 hours to complete, he will divide the weight of all materials in the specific process, in this example. 1,500 lbs. by 3 giving a process weight per hour of 500 lbs. The table shows that A may not discharge more than 1.77 lbs. in any one hour during the process. Where the process weight per hour falls between figures in the left hand column, the exact weight of permitted discharge shall be interpolated.

B. For purposes of this regulation, the total process weight from all similar process units at a plant or premises shall be used for determining the maximum allowable emission of particulate matter that passes through a stack or stacks. The process weight rate shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater. Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

(51.21) 8.02 Gypsum Cookers. Section 8.01 shall not apply to gypsum cookers or kettles constructed prior to the effective date of these regulations. No person shall cause or allow the emission of particulate matter into the atmosphere in any one hour from gypsum cookers or kettles constructed prior to the effective date of these regulations in total amounts which exceed 0.3 gr/scf of exhaust gas.

(51.8) 8.03 Asphaltic Batch Plants. Section 8.01 shall not apply to an asphaltic batch plant. No person shall cause or allow the emission of particulate matter into the atmosphere in any one hour from any or all operations of an asphaltic batch plant in total quantities in excess of the amount shown on the following table:

<u>Process Rate</u> <u>Pounds Per Hour</u>	<u>Total Emission Rate</u> <u>Pounds Per Hour</u>
10,000	10
20,000	15
30,000	22
40,000	28
60,000	31
100,000	33
200,000	37
300,000 and above	40

For a process weight between any two consecutive process weights in the table, the emission limitation shall be determined by interpolation. Where the plant has more than one emission point, the emission total is that from all emission points.

8.04 Measurement. For purposes of Section 8 any measurement of emissions into the atmosphere may be made by comparing the weight of materials before and after processing or by measurements taken after particulate emissions have passed through air pollution control devices or apparatus, if any, or by other reasonably accurate methods or procedures.

8.05 Fugitive Dust. No person shall operate process equipment which emits fugitive dust into the atmosphere unless reasonable effective precautions are taken to prevent fugitive dust from being emitted into the atmosphere.

(50.14)

Section 9. Kraft Mills

9.01 No person shall discharge into the atmosphere in any one hour from any and all operations of a Kraft Mill, total reduced sulfur in excess of 0.01 pounds.

(50.4)

Section 10. Control of Hydrocarbons

10.01 Storage. The storage of any petroleum product with a Reid vapor pressure of 1.5 pounds per square inch or greater in a stationary tank, reservoir, or other container of 40,000 gallons or greater capacity is prohibited unless reasonable precautions are taken to prevent vapors from being released into the atmosphere.

A. Reasonable effective precautions include but are not limited to the following:

1. A floating roof, consisting of a pontoon-type or double deck type roof, resting on the liquid and equipped with an effective, well maintained closure seal, to close the space between the roof edge and the tank wall.

2. Effective vapor recovery system(s).

3. Pressure tank(s) which operate(s) at pressures greater than atmospheric and which allow(s) no vapors to be emitted into the atmosphere.

4. Floating plastic blanket(s).

5. Vapor balance system(s).

6. Vapor disposal system(s).

7. Painting of the exterior roof and shell of the storage tank to reflect radiation.

B. Section 10.01 shall not apply to any stationary storage tank, reservoir, or other container of more than 40,000 gallons constructed before the effective date of this section, but shall apply to all such containers which subsequently undergo extensive repair or modification to roof or vapor recovery system and to all such containers constructed after the effective date of this section.

10.02 Volatile Hydrocarbons, Loading and Unloading. No person shall load or unload any volatile hydrocarbon with a Reid vapor pressure of 4.0 pounds per square inch or greater into any stationary storage tank or portable transport tank or tanker unless reasonable precautions are taken to prevent the escape of hydrocarbon vapors into the atmosphere.

A. Reasonable precautions include but are not limited to the following:

1. A permanent submerged fill pipe the discharge opening of which is entirely submerged when the liquid level is 6" above the bottom of such tank.

2. Vapor recovery or return systems.

3. Leak-proof connections.

B. The provisions of section 10.02 apply only to tanks or containers of 250 gallons or larger capacity.

10.03 Provisions of this section shall become effective October 1, 1971.

(7.0)

Section 11. Upset, Breakdown or Scheduled Maintenance

11.01 Operation of any equipment or air pollution control devices or apparatus so as to cause emissions of air contaminants in excess of limits set by the air pollution control regulations, which is a direct result of upset conditions or breakdown or is a direct result of the shut-down of such equipment or air pollution control devices or apparatus for scheduled maintenance. is not a violation of the air pollution control regulations, provided:

A. As to scheduled maintenance, the occurrence is reported in advance to the Secretary during his working hours, and that such work is performed during periods of non-operation and when the Air Pollution Potential Index is under 50.

B. As to upset or breakdown, the occurrence has been reported to the Secretary as soon as practicable but no later than 2 hours after the occurrence, except that when the Secretary's office is closed such report shall be made within 2 hours after said office re-opens for regular business.

C. Repairs are made with maximum, reasonable effort, including use of off-shift labor, overtime, or work periods of non-operation.

D. The emission of air contaminants is minimized as much as reasonably possible during the upset, breakdown or scheduled maintenance.

E. In the event of emission of air contaminants of a nature or in quantities which would endanger public health or safety, such emission is stopped entirely or reduced to harmless levels as soon as possible.

F. Upsets or breakdown do not occur with such frequency that careless, marginal or unsafe operation is indicated.

(3.0)

Section 12. Authority to Construct

12.01 General. No person shall install, construct, erect, alter or replace any of the articles, machines, equipment or contrivances listed in Section 12.02 without receiving authorization for such construction from the Secretary and paying the fee listed in Section 12.03. Nor shall any person install, construct, erect, alter, or replace to existing articles, machines, equipment, or contrivances listed in Section 12.02 without receiving authorization for such addition or remodeling from the Secretary and paying up to seventy-five percent (75%) of the fees listed in Section 12.03.

12.02 Articles, etc. (Articles, machines, equipment or contrivances for which authority to construct is required are the following:)

A. Fuel burning equipment which produces indirect heat which is non-gas fired or gas fired equipment which has the capability of burning other type fuel. (not including those for use in 1 or 2 family residences)

B. Crematories and/or pathological destructors.

C. Asphaltic batch plants.

D. Those which blow asphalt.

E. Those which involve crushing, processing, sizing, screening, cleaning, mixing or handling sand, gravel or rock.

F. Those which involve sandblasting and/or other abrasive cleaning.

G. Those which involve chemical processes.

H. Those which involve inedible animal by-product processing.

I. Feed mills.

J. Stationary petroleum product liquid or gas storage tank, 40,000 gallons or greater capacity.

(3.0)

12.03 Fees - Authority to Construct

A. Non-gas-fired or gas fired burning equipment with provisions for burning non-gas fuels for producing indirect heat other than those used in one and two-family residences.

1. Maximum fuel input less than 4,000,000 BTU per hour - fee \$10.00.

2. Fuel input of 4,000,000 BTU or more per hour and less than 20,000,000 BTU per hour - fee \$25.00.

3. Fuel input of 20,000,000 BTU or more per hour and less than 200,000,000 BTU per hour - fee \$50.00.

4. Maximum fuel input of 200,000,000 BTU or more per hour - fee \$100.00.

B. Asphaltic batch plant - \$100.00.

C. Asphalt blowing - fee \$75.00.

D. Dust-producing operations.

1. Sand, rock, gravel, screening, crushing, sizing, cleaning, or mixing, each - fee \$50.00.

2. Operations handling or transferring sand or dust-producing materials; e.g., concrete batching, bentonite transferring, sand blasting etc. - fee \$25.00.

E. Chemical process units - fee \$150.00.

F. Inedible animal by-product processing - fee \$50.00.

G. Stationary tank, reservoir, or other container, of more than 40,000 gallons capacity containing gasoline or any petroleum distillate having a Reid vapor pressure of 1.5 pounds per square inch or greater - fee \$25.00.

In the event that more than one fee schedule is applicable the governing schedule shall be that which results in the higher fee. The fee charged for alterations shall be based upon the ratio of the cost of alterations over the original cost, but shall not be less than \$15.00 nor more than 100% of the applicable fee.

H. Crematories and/or pathological destructors - fee \$25.00.

12.04 Applications. Applications for authority to construct shall be made on forms prescribed by the Secretary, and the applicant shall give all information necessary to enable the Secretary to make the determination required in Section 12.05. The Secretary shall grant or deny the application within a reasonable time and shall notify the applicant of his action in writing stating reasons for any denial.

12.05 Standards for Granting or Denying Applications. The Secretary shall deny an authority to construct if the applicant does not show that every article, machine, equipment or contrivance is so designed, controlled or equipped that it may be expected to operate without emitting or causing to be emitted air contaminants in violation of applicable parts of these regulations.

12.06 Conditions. The Secretary may impose conditions upon the applicant in the authority to construct which require the applicant to construct and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the

nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the article, machine, equipment or contrivance described in the authority to construct. Such conditions will refer to such things as the size, number and location of sampling holes; the size and location of sampling platform; the access to sampling platform; the utilities for operating the sampling and testing equipment; and the personal safety of men engaged in sampling and testing activities.

12.07 Expiration of Authority to Construct. If not used, an authority to construct automatically expires 12 months after the date of issuance.

12.08 Evidence of Authority to Construct. The Secretary shall issue along with an authority to construct a sticker, plaque or other evidence of authority to construct which shall be affixed to and kept on (or nearby) the item for which it was issued. No person shall deface, alter, forge, counterfeit or falsify such plaque, sticker or other evidence.

12.09 Transfer. An authority to construct is not transferable.

12.10 Payment. All fees required by this section shall be paid at the time applications are filed with the Secretary. No fees are refundable. Any authorization for construction issued under the provisions of this section but not paid for is void.

12.11 Compliance. The grant of an authority to construct shall not relieve any person from complying with these regulations.

12.12 Effective Date. This section becomes effective January 1, 1972.

(3.0)

Section 13. Annual Inspection and Registration

13.01 General. No person shall operate any of the articles, machines, equipment or contrivances listed in Section 13.02 without paying the annual fee therefor specified in Section 13.03 and receiving an annual certification of inspection and registration.

13.02 Articles, Machines, Equipment, Contrivances. Articles, machines, equipment or contrivances for which an annual certificate of inspection and registration are required are the following:

A. Non-gas-fired fuel burning equipment for producing indirect heat other than that used in one or two-family residences and all fuel burning equipment rated at greater than 4,000,000 BTU per hour regardless of the type of fuel burned.

B. Crematories and/or pathological destructors.

C. Asphaltic batch plants.

D. Asphalt blowers.

E. Sand, rock, screening and crushing, gravel operations.

F. Stationary operations handling or transferring sand or dust producing materials.

G. Chemical processes.

H. Inedible animal by-product processing.

I. Stationary gasoline storage tanks of less than 40,000 gallons but greater than 250 gallons.

J. Stationary gasoline or petroleum distillate container of more than 40,000 gallons capacity having a Reid vapor pressure of 1.5 pounds per square inch or greater.

K. Sand blasting or abrasive cleaning.

L. Feed milling operations.

M. Paint and varnish manufacturing.

13.03 Annual Fee. The annual fee is \$15.00.

13.04 Time to Obtain Certificates and Pay Fees.

A. The annual certificate of inspection and registration shall be issued on a calendar year basis.

B. Such certificates shall be obtained annually and the required fees therefor paid on or before January 1st of each year.

C. No reduction in fees will be allowed for certificates covering less than one year.

13.05 Applications

A. Applications for annual certificates of inspection and registration shall be made on forms prescribed by the Secretary.

B. Such forms shall require the disclosure of the following information:

1. Name, address and telephone number of owner or operator.
2. Address or legal description of the air contaminant source.
3. Nature of air contaminants emitted.
4. Quantities of air contaminants emitted.
5. Description of the article, machine, equipment or contrivance which produces or emits the air contaminants.
6. Description of air pollution control processes, devices or apparatus, if any.

7. Such other information as may be necessary to enable the Secretary to determine the nature and quantity of air contaminants emitted or to make the necessary inspection.

C. The certificate shall be issued by the Secretary upon completion of the prescribed application forms and payment of the required fee.

13.06 Display. The certificate issued by the Secretary shall be affixed to and kept on (or nearby) the item for which it was issued. No person shall deface, alter, forge, counterfeit or falsify said certificate.

13.07 Transfer. A certificate of inspection and registration is not transferable.

13.08 Lack of Emission Limits. The lack of emission limits or controls in this regulations for items requiring a certificate of inspection and registration does not bar the requirement of such certificate.

13.09 Failure to Pay. Any certificate issued under the provisions of this section but not paid for is void.

13.10 Compliance. The issuance of a certificate of inspection and registration shall not relieve any person from compliance with these regulations.

13.11 Annual Inspections. The Secretary shall inspect the Air contaminant sources listed in Section 13.02 annually, or oftener if necessary, to determine compliance with these regulations.

13.12 Effective Date. This section becomes effective January 1, 1972.

(2.0)
(15.0)

Section 14. Administration and Enforcement

A. The Secretary shall administer and enforce these regulations.

B. The Secretary is authorized to take any action or enter any premises for the purpose of administering or enforcing these regulations, which purpose includes but is not limited to investigation, inspection, testing and sampling.

C. Upon request of the Secretary the person responsible for the emission of air contaminants for which limits are established by these regulations shall provide such facilities, utilities, and openings exclusive of instruments and sensing devices, as may be necessary for the proper determination of the nature, extent, quantity and degree of such air contaminants. Such facilities may be either temporary or permanent at the discretion of the person responsible for their provision; shall be suitable for determinations consistent with emission limits established in these regulations; and shall be safe to work on as well as complying with safety laws, if any.

D. No person shall hinder, obstruct, delay, resist, prevent or in any way interfere, or attempt to interfere, with the Board, the Secretary or their authorized representatives while engaged in the performance of their work or duties.

E. No person shall fail to comply with these regulations.

Section 15. Repeal. Those ambient air quality standards and air pollution control regulations enacted by the Board by a resolution passed on July 29, 1968, are repealed.

Section 16. Savings Clause. These regulations do not apply to violations of previous regulations of the Board committed prior to the effective date of these regulations. Violations committed prior to the effective date of these regulations shall be dealt with in accordance with the regulations in force at the time the violation occurred.

Section 17. Severability. If any part or application of these regulations is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 18. Interpretation. Except as expressly provided to the contrary in these regulations, whenever two or more parts of these regulations limit, control or regulate the emissions of a particular air contaminant, the more restrictive or stringent shall govern.

Section 19. These regulations apply throughout Bernalillo County.

Section 20. Effective Date. Except as otherwise expressly provided in these regulations, these regulations shall become effective thirty (30) days after they have been filed under the provisions of the State Rules Act.

FEDERALLY PROMULGATED
REGULATIONS

(b) Regulation for Public Availability of Emission Data

(1) Any person who cannot obtain emission data from the Agency responsible for making emission data available to the public, as specified in the applicable plan, concerning emissions from any source subject to emission limitations which are part of the approved plan may request that the appropriate Regional Administrator obtain and make public such data. Within 30 days after receipt of any such written request, the Regional Administrator shall require the owner or operator of any such source to submit information within 30 days on the nature and amounts of emissions from such source and any other information as may be deemed necessary by the Regional Administrator to determine whether such source is in compliance with applicable emission limitations or other control measures that are part of the applicable plan.

(2) Commencing after the initial notification by the Regional Administrator pursuant to paragraph (b) (1) of this section, the owner or operator of the source shall maintain records of the nature and amounts of emissions from such source and any other information as may be deemed necessary by the Regional Administrator to determine whether such source is in compliance with applicable emission limitations or other control measures that are part of the plan. The information recorded shall be summarized and reported to the Regional Administrator, on forms furnished by the Regional Administrator, and shall be submitted within 45 days after the end of the reporting period. Reporting periods are January 1--June 30 and July--December 31.

(3) Information recorded by the owner or operator and copies of this summarizing report submitted to the Regional Administrator shall be retained by the owner or operator for 2 years after the date on which the pertinent report is submitted.

(4) Emission data obtained from owners or operators of stationary sources will be correlated with applicable emission limitations and other control measures that are part of the applicable plan and will be available at the appropriate regional office and at other locations in the state designated by the Regional Administrator.

(10.0) 52.1628 Review of New or Modified Indirect Sources

(b) Regulation for Review of New or Modified Indirect Sources

(1) All terms used in this paragraph but not specifically defined below shall have the meaning given them in 52.01 of this chapter.

- (i) The term "indirect source" means a facility, building, structure, or installation which attracts or may attract mobile source activity that results in emissions of a pollutant for which there is a national standard. Such indirect sources include, but are not limited to:
 - (a) Highways and roads.
 - (b) Parking facilities.
 - (c) Retail, commercial and industrial facilities.
 - (d) Recreation, amusement, sports and entertainment facilities.
 - (e) Airports.
 - (f) Office and Government buildings.
 - (g) Apartment and condominium buildings.
 - (h) Education facilities.
- (ii) The term "Administrator" means the Administrator of the Environmental Protection Agency or his designated agent.
- (iii) The term "associated parking area" means a parking facility or facilities owned and/or operated in conjunction with an indirect source.
- (iv) The term "aircraft operation" means an aircraft take-off or landing.
- (v) The phrase "to commence construction" means to engage in a continuous program of on-site construction including site clearance, grading, dredging, or land filling specifically designed for an indirect source in preparation for the fabrication, erection, or installation of the building components of the indirect source. For the purpose of this paragraph, interruptions resulting from acts of God, strikes, litigation, or other matters beyond the control of the owner shall be disregarded in determining whether a construction or modification program is continuous.

- 8
- (vi) The phrase "to commence modification" means to engage in a continuous program of on-site modification, including site clearance, grading, dredging, or land filling in preparation for specific modification of the indirect source.
 - (vii) The term "highway section" means the development proposal of a highway of substantial length between logical termini (major crossroads, population centers, major traffic generators, or similar major highway control elements) as normally included in a single location study or multi-year highway improvement program as set forth in 23 CFR 770.201 (38 FR 31677).
 - (viii) The term "highway project" means all or a portion of a highway section which would result in a specific construction contract.
 - (ix) The term "Standard Metropolitan Statistical Area (SMSA)" means such areas as designated by the U.S. Bureau of the Budget in the following publication: "Standard Metropolitan Statistical Area," issued in 1967, with subsequent amendments.
- (2) The requirements of this paragraph are applicable to the following:
- (i) In an SMSA:
 - (a) Any new parking facility or other new indirect source with an associated parking area, which has a new parking capacity of 1,000 cars or more; or
 - (b) Any modified parking facility, or any modification of an associated parking area, which increases parking capacity by 500 cars or more; or
 - (c) Any new highway project with an anticipated average annual daily traffic volume of 20,000 or more vehicles per day within ten years of construction; or
 - (d) Any modified highway project which will increase average annual daily traffic volume by 10,000 or more vehicles per day within ten years after modification.
 - (ii) Outside an SMSA:
 - (a) Any new parking facility, or other new indirect source with an associated parking area, which has a parking capacity of 2,000 cars or more; or

- (b) Any modified parking facility, or any modification of an associated parking area, which increases parking capacity by 1,000 cars or more.
 - (iii) Any airport, the construction or general modification program of which is expected to result in the following activity within ten years of construction or modification:
 - (a) New airport: 50,000 or more operations per year by regularly scheduled air carriers, or use by 1,600,000 or more passengers per year.
 - (b) Modified airport: Increase of 50,000 or more operations per year by regularly scheduled air carriers over the existing volume of operations, or increase of 1,600,000 or more passengers per year.
 - (iv) Where an indirect source is constructed or modified in increments which individually are not subject to review under this paragraph, and which are not part of a program of construction or modification in planned incremental phases approved by the Administrator, all such increments commenced after December 31, 1974, or after the latest approval hereunder, whichever date is most recent, shall be added together for determining the applicability of this paragraph.
- (3) No owner or operator of an indirect source subject to this paragraph shall commence construction or modification of such source after December 31, 1974, without first obtaining approval from the Administrator. Application for approval to construct or modify shall be by means prescribed by the Administrator, and shall include a copy of any draft or final environmental impact statement which has been prepared pursuant to the National Environmental Policy Act (42 U.S.C. 4321). If not included in such environmental impact statement, the Administrator may request the following information:
- (i) For all indirect sources subject to this paragraph, other than highway projects:
 - (a) The name and address of the applicant.
 - (b) A map showing the location of the site of indirect source and the topography of the area.
 - (c) A description of the proposed use of the site, including the normal hours of operation of the facility, and the general types of activities to be operated therein.

- (d) A site plan showing the location of associated parking areas, points of motor vehicle ingress and egress to and from the site and its associated parking areas, and the location and height of buildings on the site.
 - (e) An identification of the principal roads, highways, and intersections that will be used by motor vehicles moving to or from the indirect source.
 - (f) An estimate, as of the first year after the date the indirect source will be substantially complete and operational, of the average daily traffic volumes, maximum traffic volumes for one-hour and eight-hour periods, and vehicle capacities of the principal roads, highways, and intersections identified pursuant to subdivision (i) (e) of this subparagraph located within one-fourth mile of all boundaries of the site.
 - (g) Availability of existing and projected mass transit to service the site.
 - (h) Where approval is sought for indirect sources to be constructed in incremental phases, the information required by this subparagraph (3) shall be submitted for each phase of the construction project.
 - (i) Any additional information or documentation that the Administrator deems necessary to determine the air quality impact of the indirect source, including the submission of measured air quality data at the proposed site prior to construction or modification.
- (ii) For airports:
- (a) An estimate of the average number and maximum number of aircraft operations per day by type of aircraft during the first, fifth and tenth years after the date of expected completion.
 - (b) A description of the commercial, industrial, residential and other development that the applicant expects will occur within three miles of the perimeter of the airport within the first five and the first ten years after the date of expected completion.
 - (c) Expected passenger loadings at the airport.
 - (d) The information required under subdivisions (i) (a) through (i) of this subparagraph.

- (iii) For highway projects:
 - (a) A description of the average and maximum traffic volumes for one, eight, and 24-hour time periods expected within 10 years of date of expected completion.
 - (b) An estimate of vehicle speeds for average and maximum traffic volume conditions and the vehicle capacity of the highway project.
 - (c) A map showing the location of the highway project, including the location of buildings along the right-of-way.
 - (d) A description of the general features of the highway project and associated right-of-way, including the approximate height of buildings adjacent to the highway.
 - (e) Any additional information or documentation that the Administrator deems necessary to determine the air quality impact of the indirect source, including the submission of measured air quality data at the proposed site prior to construction or modification.
- (iv) For indirect sources other than airports and those highway projects subject to the provisions of paragraph (b) (6) (iii) of this section, the air quality monitoring requirements of paragraph (b) (3) (i) (i) of this section shall be limited to carbon monoxide, and shall be conducted for a period of not more than 14 days.
- (4) (i) For indirect sources other than highway projects and airports, the Administrator shall not approve an application to construct or modify if he determines that the indirect source will:
 - (a) Cause a violation of the control strategy of any applicable state implementation plan; or
 - (b) Cause or exacerbate a violation of the national standards for carbon monoxide in any region or portion thereof.
- (ii) The Administrator shall make the determination pursuant to paragraph (b) (4) (i) (b) of this section by evaluating the anticipated concentration of carbon monoxide at reasonable receptor or exposure sites which will be affected by the mobile source activity expected to be attracted by the indirect source. Such determination may be made by using traffic flow characteristic guidelines

published by the Environmental Protection Agency which relate traffic demand and capacity considerations to ambient carbon monoxide impact, by use of appropriate atmospheric diffusion models (examples of which are referenced in Appendix O to Part 51 of this chapter), and/or by any other reliable analytic method. The applicant may (but need not) submit with his application, the results of an appropriate diffusion model and/or any other reliable analytic method, along with the technical data and information supporting such results. Any such results and supporting data submitted by the applicant shall be considered by the Administrator in making his determination pursuant to paragraph (b) (4) (i) (b) of this section.

- (5) (i) For airports subject to this paragraph, the Administrator shall base his decision on the approval or disapproval of an application on the considerations to be published as an Appendix to this Part.
- (ii) For highway projects and parking facilities specified under paragraph (b) (2) of this section which are associated with airports, the requirements and procedures specified in paragraphs (b) (4) and (6) (i) and (ii) of this section shall be met.
- (6) (i) For all highway projects subject to this paragraph, the Administrator shall not approve an application to construct or modify if he determines that the indirect source will:
 - (a) Cause a violation of the control strategy of any applicable state implementation plan; or
 - (b) Cause or exacerbate a violation of the national standards for carbon monoxide in any region or portion thereof.
- (ii) The determination pursuant to paragraph (b) (6) (i) (b) of this section shall be made by evaluating the anticipated concentration of carbon monoxide at reasonable receptor or exposure sites which will be affected by the mobile source activity expected on the highway for the ten year period following the expected date of completion according to the procedures specified in paragraph (b) (4) (ii) of this section.
- (iii) For new highway projects subject to this paragraph with an anticipated average daily traffic volume of 50,000 or more vehicles within ten years of construction, or modifications to highway projects subject to this paragraph which will increase average daily traffic volume by 25,000

or more vehicles within ten years after modification, the Administrator's decision on the approval or disapproval of an application shall be based on the considerations to be published as an Appendix to this Part in addition to the requirements of paragraph (b) (6) (i) of this section.

- (7) The determination of the air quality impact of a proposed indirect source "at reasonable receptor or exposure sites", shall mean such locations where people might reasonably be exposed for time periods consistent with the national ambient air quality standards for the pollutants specified for analysis pursuant to this paragraph.
- (8) (i) Within 20 days after receipt of an application or addition thereto, the Administrator shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of paragraph (b) (8) (ii) of this section shall be the date on which all required information is received by the Administrator.
- (ii) Within 30 days after receipt of a complete application, the Administrator shall:
 - (a) Make a preliminary determination whether the indirect source should be approved, approved with conditions in accordance with paragraphs (b) (9) or (10) of this section, or disapproved.
 - (b) Make available in at least one location in each region in which the proposed indirect source would be constructed, a copy of all materials submitted by the owner or operator, a copy of the Administrator's preliminary determination, and a copy or summary of other materials, if any, considered by the Administrator in making his preliminary determination; and
 - (c) Notify the public, by prominent advertisement in a newspaper of general circulation in each region in which the proposed indirect source would be constructed, of the opportunity for written public comment on the information submitted by the owner or operator and the Administrator's preliminary determination on the approvability of the indirect source.
- (iii) A copy of the notice required pursuant to this subparagraph shall be sent to the applicant and to officials and agencies having cognizance over the location where the indirect source will be situated, as follows: State and local air pollution control agencies, the chief executive of the city and county; any comprehensive regional

land use planning agency; and for highways, any local board or committee charged with responsibility for activities in the conduct of the urban transportation planning process (3-C process) pursuant to 23 U.S.C. 134.

- (iv) Public comments submitted in writing within 30 days after the date such information is made available shall be considered by the Administrator in making his final decision on the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Administrator shall consider the applicant's response in making his final decision. All comments shall be made available for public inspection in at least one location in the region in which the indirect source would be located.
- (v) The Administrator shall take final action on an application within 30 days after the close of the public comment period. The Administrator shall notify the applicant in writing of his approval, conditional approval, or denial of the application, and shall set forth his reasons for conditional approval or denial. Such notification shall be made available for public inspection in at least one location in the region in which the indirect source would be located.
- (vi) The Administrator may extend each of the time periods specified in paragraphs (b) (8) (ii), (iv), or (v) of this section by no more than 30 days, or such other period as agreed to by the applicant and the Administrator.
- (9) (i) Whenever an indirect source as proposed by an owner or operator's application would not be permitted to be constructed for failure to meet the tests set forth pursuant to paragraphs (b) (4) (i), (b) (5) (i), or (b) (6) (i) and (iii) of this section, the Administrator may impose reasonable conditions on an approval related to the air quality aspects of the proposed indirect source so that such source, if constructed or modified in accordance with such conditions, could meet the tests set forth pursuant to paragraphs (b) (4) (i), (b) (5) (i), or (b) (6) (i) and (iii) of this section. Such conditions may include, but not be limited to:
 - (a) Binding commitments to roadway improvements or additional mass transit facilities to serve the indirect source secured by the owner or operator from governmental agencies having jurisdiction thereof;
 - (b) Binding commitments by the owner or operator to specific programs for mass transit incentives for employees and patrons of the source; and

- (c) Binding commitments by the owner or operator to construct, modify, or operate the indirect source in such a manner as may be necessary to achieve the traffic flow characteristics published by the Environmental Protection Agency pursuant to paragraph (b) (4) (ii) of this section.
- (ii) The Administrator may specify that any items of information provided in an application for approval related to the operation of an indirect source which may affect the source's air quality impact shall be considered permit conditions.
- (10) Notwithstanding the provisions relating to modified indirect sources contained in paragraph (b) (2) of this section, the Administrator may condition any approval by reducing the extent to which the indirect source may be further modified without resubmission for approval under this paragraph.
- (11) Any owner or operator who fails to construct an indirect source in accordance with the application as approved by the Administrator; any owner or operator who fails to construct and operate an indirect source in accordance with conditions imposed by the Administrator under paragraph (b) (9) of this section; any owner or operator who modifies an indirect source in violation of conditions imposed by the Administrator under paragraph (b) (10) of this section; or any owner or operator of an indirect source subject to this paragraph who commences construction or modification thereof after December 31, 1974, without applying for and receiving approval hereunder, shall be subject to the penalties specified under section 113 of the Act and shall be considered in violation of an emission standard or limitation under section 304 of the Act. Subsequent modification to an approved indirect source may be made without applying for permission pursuant to this paragraph only where such modification would not violate any condition imposed pursuant to paragraphs (b) (9) and (10) of this section and would not be subject to the modification criteria set forth in paragraph (b) (2) of this section.
- (12) Approval to construct or modify shall become invalid if construction or modification is not commenced within 24 months after receipt of such approval. The Administrator may extend such time period upon satisfactory showing that an extension is justified. The applicant may apply for such an extension at the time of initial application or at any time thereafter.
- (13) Approval to construct or modify shall not relieve any owner or operator of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State implementation plan.

- (14) Where the Administrator delegates the responsibility for implementing the procedures for conducting indirect source review pursuant to this paragraph to any agency, other than a regional office of the Environmental Protection Agency, the following provisions shall apply:
- (i) Where the agency designated is not an air pollution control agency, such agency shall consult the appropriate State or local air pollution control agency prior to making any determination required by paragraphs (b) (4), (5), or (6) of this section. Similarly, where the agency designated does not have continuing responsibilities for land use planning, such agency shall consult with the appropriate State or local land use and transportation planning agency prior to making any determination required by paragraph (b) (9) of this section.
 - (ii) The Administrator of the Environmental Protection Agency shall conduct the indirect source review pursuant to this paragraph for any indirect source owned or operated by the United States Government.
 - (iii) A copy of the notice required pursuant to paragraph (b) (8) (ii) (c) of this section shall be sent to the Administrator through the appropriate Regional Office.
- (15) In any area in which a "management of parking supply" regulation which has been promulgated by the Administrator is in effect, indirect sources which are subject to review under the terms of such a regulation shall not be required to seek review under this paragraph but instead shall be required to seek review pursuant to such management of parking supply regulation. For purposes of this paragraph, a "management of parking supply" regulation shall be any regulation promulgated by the Administrator as part of a transportation control plan pursuant to the Clean Air Act which requires that any new or modified facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.
- (16) Notwithstanding any of the foregoing provisions to the contrary, the operation of this paragraph is hereby suspended pending further notice. No facility which commences construction prior to the expiration of the sixth month after the operation of this paragraph is reinstated (as to that type of facility) shall be subject to this paragraph.

(37 FR 10846, May 31, 1972 as amended at 40 FR 28065, July 3, 1975; 40 FR 40160, Sept. 2, 1975)

(17.0) 52.1634 Prevention of Significant Deterioration

(b) Definitions. For the purposes of this section:

- (1) "Facility" means an identifiable piece of process equipment. A stationary source is composed of one or more pollutant-emitting facilities.
- (2) The phrase "Administrator" means the Administrator of the Environmental Protection Agency or his designated representative.
- (3) The phrase "Federal Land Manager" means the head, or his designated representative, of any Department or Agency of the Federal Government which administers federally-owned land, including public domain lands.
- (4) The phrase "Indian Reservation" means any federally-recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.
- (5) The phrase "Indian Governing Body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.
- (6) "Construction" means fabrication, erection or installation of a stationary source.
- (7) "Commenced" means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(c) Area designation and deterioration increment

- (1) The provisions of this paragraph have been incorporated by reference into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part. Where this paragraph is so incorporated, the provisions shall also be applicable to all lands owned by the Federal Government and Indian Reservations located in such State. The provisions of this paragraph do not apply in those counties or other functionally equivalent areas that pervasively exceeded any national ambient air quality standards during 1974 for sulfur dioxide or particulate matter and then only with respect to such pollutants. States may notify the Administrator at any time of those areas which exceeded the national standards during 1974 and therefore are exempt from the requirements of this paragraph.

- (2) (i) For purposes of this paragraph, areas designated as Class I or II shall be limited to the following increases in pollutant concentration occurring since January 1, 1975:

Area Designations		
Pollutant	Class I (ug/m ³)	Class II (ug/m ³)
Particulate matter:		
Annual geometric mean	5	10
24-hr maximum	10	30
Sulfur dioxide:		
Annual arithmetic mean	2	15
24-hr maximum	5	100
3-hr maximum	25	700

- (ii) For purposes of this paragraph, areas designated as Class III shall be limited to concentrations of particulate matter and sulfur dioxide no greater than the national ambient air quality standards.
- (iii) The air quality impact of sources granted approval to construct or modify prior to January 1, 1975 (pursuant to the approved new source review procedures in the plan) but not yet operating prior to January 1, 1975, shall not be counted against the air quality increments specified in paragraph (c) (2) (i) of this section.
- (3) (i) All areas are designated Class II as of the effective date of this paragraph. Redesignation may be proposed by the respective States, Federal Land Manager, or Indian Governing Bodies, as provided below, subject to approval by the Administrator.
- (ii) The State may submit to the Administrator a proposal to redesignate areas of the State Class I, Class II, or Class III, provided that:
- At least one public hearing is held in or near the area affected and this public hearing is held in accordance with procedures established in 51.4 of this chapter, and
 - Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation are notified at least 30 days prior to the public hearing, and

- (c) A discussion of the reasons for the proposed redesignation is available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contains appropriate notification of the availability of such discussion, and
 - (d) The proposed redesignation is based on the record of the State's hearing, which must reflect the basis for the proposed redesignation, including consideration of (1) growth anticipated in the area, (2) the social, environmental, and economic effects of such redesignation upon the area being proposed for redesignation and upon other areas and States, and (3) any impacts of such proposed redesignation upon regional or national interests.
 - (e) The redesignation is proposed after consultation with the elected leadership of local and other sub-state general purpose governments in the area covered by the proposed redesignation.
- (iii) Except as provided in paragraph (c) (3) (iv) of this section, a State in which lands owned by the Federal Government are located may submit to the Administrator a proposal to redesignate such lands Class I, Class II, or Class III in accordance with subdivision (ii) of this subparagraph provided that:
- (a) The redesignation is consistent with adjacent State and privately owned land, and
 - (b) Such redesignation is proposed after consultation with the Federal Land Manager.
- (iv) Notwithstanding subdivision (iii) of this subparagraph, the Federal Land Manager may submit to the Administrator a proposal to redesignate any Federal lands to a more restrictive designation than would otherwise be applicable provided that:
- (a) The Federal Land Manager follows procedures equivalent to those required of States under paragraph (c) (3) (ii) and,
 - (b) Such redesignation is proposed after consultation with the State(s) in which the Federal Land is located or which border the Federal Land.
- (v) Nothing in this section is intended to convey authority to the States over Indian Reservations where States have not assumed such authority under other laws nor is it intended to deny jurisdiction which States have assumed

under other laws. Where a State has not assumed jurisdiction over an Indian Reservation the appropriate Indian Governing Body may submit to the Administrator a proposal to redesignate areas Class I, Class II, or Class III, provided that:

- (a) The Indian Governing Body follows procedures equivalent to those required of States under paragraph (c) (3) (ii) and,
 - (b) Such redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located or which border the Indian Reservation and, for those lands held in trust, with the approval of the Secretary of the Interior.
- (vi) The Administrator shall approve, within 90 days, any redesignation proposed pursuant to this subparagraph as follows:
- (a) Any redesignation proposed pursuant to subdivisions (ii) and (iii) of this subparagraph shall be approved unless the Administrator determines (1) that the requirements of subdivisions (ii) and (iii) of this subparagraph have not been complied with, (2) that the State has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3) (i) (d) of this paragraph, or (3) that the State has not requested and received delegation of responsibility for carrying out the new source review requirements of paragraphs (d) and (e) of this section.
 - (b) Any redesignation proposed pursuant to subdivision (iv) of this subparagraph shall be approved unless he determines (1) that the requirements of subdivision (iv) of this subparagraph have not been complied with, or (2) that the Federal Land Manager has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3) (ii) (d) of this paragraph.
 - (c) Any redesignation submitted pursuant to subdivision (v) of this subparagraph shall be approved unless he determines (1) that the requirements of subdivision (v) of this subparagraph have not been complied with, or (2) that the Indian Governing Body has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3) (ii) (d) of this paragraph.

- (d) Any redesignation proposed pursuant to this paragraph shall be approved only after the Administrator has solicited written comments from affected Federal agencies and Indian Governing Bodies and from the public on the proposal.
 - (e) Any proposed redesignation protested to the proposing State, Indian Governing Body, or Federal Land Manager and to the Administrator by another State or Indian Governing Body because of the effects upon such protesting State or Indian Reservation shall be approved by the Administrator only if he determines that in his judgment the redesignation appropriately balances considerations of growth anticipated in the area proposed to be redesignated; the social, environmental and economic effects of such redesignation upon the area being redesignated and upon other areas and States; and any impacts upon regional or national interests.
 - (f) The requirements of paragraph (c) (3) (vi) (a) (3) that a State request and receive delegation of the new source review requirements of this section as a condition to approval of a proposed redesignation, shall include as a minimum receiving the administrative and technical functions of the new source review. The Administrator will carry out any required enforcement action in cases where the State does not have adequate legal authority to initiate such actions. The Administrator may waive the requirements of paragraph (c) (3) (vi) (a) (3) if the State Attorney-General has determined that the State cannot accept delegation of the administrative/technical functions.
 - (vii) If the Administrator disapproves any proposed area designation under this subparagraph, the State, Federal Land Manager or Indian Governing Body, as appropriate, may re-submit the proposal after correcting the deficiencies noted by the Administrator or reconsidering any area designation determined by the Administrator to be arbitrary and capricious.
- (d) Review of new sources
- (1) The provisions of this paragraph have been incorporated by reference into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part. Where this paragraph is so incorporated, the requirements of this paragraph apply to any new or modified stationary source of the type identified below which has not commenced construction or modification prior to June 1, 1975 except as specifically provided below. A

source which is modified, but does not increase the amount of sulfur oxides or particulate matter emitted, or is modified to utilize an alternative fuel, or higher sulfur content fuel, shall not be subject to this paragraph.

- (i) Fossil-Fuel Steam Electric Plants of more than 1000 million B.T.U. per hour heat input.
 - (ii) Coal Cleaning Plants.
 - (iii) Kraft Pulp Mills.
 - (iv) Portland Cement Plants.
 - (v) Primary Zinc Smelters.
 - (vi) Iron and Steel Mills.
 - (vii) Primary Aluminum Ore Reduction Plants.
 - (viii) Primary Copper Smelters.
 - (ix) Municipal Incinerators capable of charging more than 250 tons of refuse per 24 hour day.
 - (x) Sulfuric Acid Plants.
 - (xi) Petroleum Refineries.
 - (xii) Lime Plants.
 - (xiii) Phosphate Rock Processing Plants.
 - (xiv) By-Product Coke Oven Batteries.
 - (xv) Sulfur Recovery Plants.
 - (xvi) Carbon Black Plants (furnace process).
 - (xvii) Primary Lead Smelters.
 - (xviii) Fuel Conversion Plants.
 - (xix) Ferroalloy production facilities commencing construction after October 5, 1975.
- (2) No owner or operator shall commence construction or modification of a source subject to this paragraph unless the Administrator determines that, on the basis of information submitted pursuant to subparagraph (3) of this paragraph:

- (i) The effect on air quality concentration of the source or modified source, in conjunction with the effects of growth and reduction in emissions after January 1, 1975, of other sources in the area affected by the proposed source, will not violate the air quality increments applicable in the area where the source will be located nor the air quality increments applicable in any other areas. The analysis of emissions growth and reduction after January 1, 1975, of other sources in the areas affected by the proposed source shall include all new and modified sources granted approval to construct pursuant to this paragraph; reduction in emissions from existing sources which contributed to air quality during all or part of 1974; and general commercial, residential, industrial, and other sources of emissions growth not exempted by paragraph (c) (2) (iii) of this section which has occurred since January 1, 1975.
 - (ii) The new or modified source will meet an emission limit, to be specified by the Administrator as a condition to approval, which represents that level of emission reduction which would be achieved by the application of best available control technology, as defined in 52.01 (f), for particulate matter and sulfur dioxide. If the Administrator determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, he may instead prescribe a design or equipment standard requiring the application of best available control technology. Such standard shall to the degree possible set forth the emission reductions achievable by implementation of such design or equipment, and shall provide for compliance by means which achieve equivalent results.
 - (iii) With respect to modified sources, the requirements of subparagraph (2) (ii) of this paragraph shall be applicable only to the facility or facilities from which emissions are increased.
- (3) In making the determinations required by paragraph (d) (2) of this section, the Administrator shall, as a minimum, require the owner or operator of the source subject to this paragraph to submit: site information, plans, description, specifications, and drawings showing the design of the source; information necessary to determine the impact that the construction or modification will have on sulfur dioxide and particulate matter air quality levels; and any other information necessary to determine that best available control technology will be applied. Upon request of the Administrator, the owner or operator of the source shall provide information on the nature and extent of general commercial, residential, industrial, and other growth which has occurred in the area affected by the source's emissions (such area to be specified by the

Administrator) since January 1, 1975.

- (4) (i) Where a new or modified source is located on Federal Lands, such source shall be subject to the procedures set forth in paragraphs (d) and (e) of this section. Such procedures shall be in addition to applicable procedures conducted by the Federal Land Manager for administration and protection of the affected Federal Lands. Where feasible, the Administrator will coordinate his review and hearings with the Federal Land Manager to avoid duplicate administrative procedures.
 - (ii) New or modified sources which are located on Indian Reservations shall be subject to procedures set forth in paragraphs (d) and (e) of this section. Such procedures shall be administered by the Administrator in cooperation with the Secretary of the Interior with respect to lands over which the State has not assumed jurisdiction under other laws.
 - (iii) Whenever any new or modified source is subject to action by a Federal Agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this paragraph shall be coordinated with the broad environmental reviews under that Act, to the maximum extent feasible and reasonable.
- (5) Where an owner or operator has applied for permission to construct or modify pursuant to this paragraph and the proposed source would be located in an area which has been proposed for redesignation to a more stringent class (or the State, Indian Governing Body, or Federal Land Manager has announced such consideration), approval shall not be granted until the Administrator has acted on the proposed redesignation.
- (e) Procedures for public participation
- (1) (i) Within 20 days after receipt of an application to construct, or any addition to such application, the Administrator shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of paragraph (e) (1) (ii) of this section shall be the date on which all required information is received by the Administrator.
 - (ii) Within 30 days after receipt of a complete application, the Administrator shall:

- (a) Make a preliminary determination whether the source should be approved, approved with conditions, or disapproved.
 - (b) Make available in at least one location in each region in which the proposed source would be constructed, a copy of all materials submitted by the owner or operator, a copy of the Administrator's preliminary determination and a copy or summary of other materials, if any, considered by the Administrator in making his preliminary determination; and
 - (c) Notify the public, by prominent advertisement in newspaper of general circulation in each region in which the proposed source would be constructed, of the opportunity for written public comment on the information submitted by the owner or operator and the Administrator's preliminary determination on the approvability of the source.
- (iii) A copy of the notice required pursuant to this subparagraph shall be sent to the applicant and to officials and agencies having cognizance over the locations where the source will be situated as follows: State and local air pollution control agencies, the chief executive of the city and county; any comprehensive regional land use planning agency; and any State, Federal Land Manager or Indian Governing Body whose lands will be significantly affected by the source's emissions.
- (iv) Public comments submitted in writing within 30 days after the date such information is made available shall be considered by the Administrator in making his final decision on the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Administrator shall consider the applicant's response in making his final decision. All comments shall be made available for public inspection in at least one location in the region in which the source would be located.
- (v) The Administrator shall take final action on an application within 30 days after the close of the public comment period. The Administrator shall notify the applicant in writing of his approval, conditional approval, or denial of the application, and shall set forth his reasons for conditional approval or denial. Such notification shall be made available for public inspection in at least one location in the region in which the source would be located.

- (vi) The Administrator may extend each of the time periods specified in paragraph (e) (1) (ii), (iv), or (v) of this section by no more than 30 days or such other period as agreed to by the applicant and the Administrator.
 - (2) Any owner or operator who constructs, modifies, or operates a stationary source not in accordance with the application, as approved and conditioned by the Administrator, or any owner or operator of a stationary source subject to this paragraph who commences construction or modification after June 1, 1975, without applying for and receiving approval hereunder, shall be subject to enforcement action under section 113 of the Act.
 - (3) Approval to construct or modify shall become invalid if construction or expansion is not commenced within 18 months after receipt of such approval or if construction is discontinued for a period of 18 months or more. The Administrator may extend such time period upon a satisfactory showing that an extension is justified.
 - (4) Approval to construct or modify shall not relieve any owner or operator of the responsibility to comply with the control strategy and all local, State, and Federal regulations which are part of the applicable State Implementation Plan.
- (f) Delegation of authority
- (1) The Administrator shall have the authority to delegate responsibility for implementing the procedures for conducting source review pursuant to paragraphs (d) and (e), in accordance with subparagraphs (2), (3), and (4) of this paragraph.
 - (2) Where the Administrator delegates the responsibility for implementing the procedures for conducting source review pursuant to this section to any Agency, other than a regional office of the Environmental Protection Agency, the following provisions shall apply:
 - (i) Where the agency designated is not an air pollution control agency, such agency shall consult with the appropriate State and local air pollution control agency prior to making any determination required by paragraph (d) of this section. Similarly, where the agency designated does not have continuing responsibilities for managing land use, such agency shall consult with the appropriate State and local agency which is primarily responsible for managing land use prior to making any determination required by paragraph (d) of this section.
 - (ii) A copy of the notice pursuant to paragraph (e) (1) (ii) (c) of this section shall be sent to the Administrator through the appropriate regional office.

- (3) In accordance with Executive Order 11752, the Administrator's authority for implementing the procedures for conducting source review pursuant to this section shall not be delegated, other than to a regional office of the Environmental Protection Agency, for new or modified sources which are owned or operated by the Federal government or for new or modified sources located on Federal lands; except that, with respect to the latter category, where new or modified sources are constructed or operated on Federal lands pursuant to leasing or other Federal agreements, the Federal land Manager may at his discretion, to the extent permissible under applicable statutes and regulations, require the lessee or permittee to be subject to a designated State or local agency's procedures developed pursuant to paragraphs (d) and (e) of this section.
- (4) The Administrator's authority for implementing the procedures for conducting source review pursuant to this section shall not be re-delegated, other than to a regional office of the Environmental Protection Agency, for new or modified sources which are located on Indian reservations except where the State has assumed jurisdiction over such land under other laws, in which case the Administrator may delegate his authority to the States in accordance with subparagraphs (2), (3), and (4) of this paragraph.

(39 FR 42514, Dec. 5, 1974; 40 FR 2802, Jan. 16, 1975, as amended at 40 FR 24535, June 9, 1975; 40 FR 25005, June 12, 1975; 40 FR 42012, Sept. 10, 1975)